COMMITTEE ON EDUCATION AND LABOR

U.S. HOUSE OF REPRESENTATIVES
402 CANNON HOUSE OFFICE BUILDING
WASHINGTON, DC 20515

SUBCOMMITTEE ON EMPLOYMENT OPPORTUNITIES

HEARING ON H.R. 3330,
THE "FEDERAL EQUAL EMPLOYMENT OPPORTUNITY ACT"
FEBRUARY 9, 1988, 9:30 AM, 2261 RHOB

WITNESSES

The Honorable Clarence Thomas
Chairman
U.S. Equal Employment Opportunity Commission

PANEL I

Richard Seymour
Director, Employment Discrimination Project
Lawyer's Committee for Civil Rights Under Law

Freda Kurtz
National President
Federally Employed Women

Mario Moreno
Associate Council
Mexican American Legal Defense & Educational Fund

TESTIMONY OF CHAIRMAN CLARENCE THOMAS
OF THE U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
BEFORE THE SUBCOMMITTEE ON EMPLOYMENT OPPORTUNITIES
OF THE COMMITTEE ON EDUCATION AND LABOR
U.S. HOUSE OF REPRESENTATIVES
FEBRUARY 9, 1988

Good morning, Chairman Martinez and members of the subcommittee. I appreciate the opportunity to appear before you today to discuss equal employment opportunity in the federal work force. Specifically, you have asked me to comment on H.R. 3330.

The state of affirmative action within the federal government is today a very positive one. Through programs set forth by Equal Employment Opportunity Commission management directives, federal affirmative action has resulted in increased work force participation by minorities, women and handicapped individuals. Of course, it must be said that we have not reached an ideal state. There is still improvement needed in several categories, and we intend to seek those improvements through our new management directives.

Before I provide comments on H.R. 3330, they should be prefaced by a brief summary of the Equal Employment Opportunity Commission's Management Directive 714.

EEOC MANAGEMENT DIRECTIVE 714

Approved unanimously by the Commission, Management Directive 714 prescribes to federal agencies instructions, policies, procedures, guidance and formats for the development and submission of multi-year affirmative employment program plans, annual affirmative employment program accomplishment reports and annual affirmative employment program plan updates for fiscal years 1988 through 1992.

We are requiring agencies to develop more comprehensive, long-term plans for affirmative employment.

We intend, through this management directive, to substantially contribute to the achievement of equal employment opportunity for all federal employees, not only when hired, but also as they advance within the work force. We believe this is a stronger, more effective affirmative employment program.

Like previous directives, MD 714 instructs agencies to determine underrepresentation of women and minorities in their work forces and to devise flexible approaches to improve those levels. Additionally, it requires agencies to look at the internal movement of EEO groups in their work forces.

Those previous directives have been successful in increasing the overall participation of women and minorities in the federal government. The next logical step is to direct the emphasis on upward movement into higher level positions.

Under the new management directive, agencies will be required to conduct a comprehensive analysis of its affirmative employment program, identify problems within the agency and then establish measurable objectives and steps to eliminate those problems.

Some of the major components include:

(1) shifting major responsibility and accountability to agency heads and their designees for achieving EEO objectives;

(2) focusing on specific problems within specific agencies rather than general issues identified by generalized instructions;

(3) eliminating unnecessary forms;

(4) placing specific emphasis on identification and removal of barriers so that elimination of problem areas are permanent and not just a short-term effort; and

(5) requiring a five-year planning document with annual accomplishment reports as well as statistical reports.

Identification of problems and barriers calls for the development of objective and action items to resolve these identified problems and barriers. The new directive also requires agencies to develop specific and measurable objectives which may include numerical objectives.

The key is that we are focusing on specific problems in specific agencies rather than dealing with generalized objectives. As a result, we are able to permanently remove barriers within individual agencies that block affirmative employment progress.

To make agencies more accountable, EEOC is placing more emphasis on on-site program audits. We use labor force data for comparison with agency work force profiles. We mandate that additional program elements be addressed when agencies fail to show progress. And we report our findings on a yearly basis to the President, the Congress and the appropriate congressional committees.

This program is designed to give agencies flexibility. Those agencies that still have an overall underrepresentation of women and minorities in their work force can concentrate on that problem, and those agencies without overall underrepresentation shortcomings may direct their efforts toward movement into higher paying positions.

On the whole, the Commission is aiming to achieve a stronger, more effective affirmative employment program which should improve the affirmative employment planning process and further achieve equal employment opportunity for all federal employees.

COMMENTS ON H.R. 3330

Summary

By cementing into law extremely detailed affirmative employment instructions, Congress would remove from EEOC the flexibility to respond easily and rapidly to changes in the work force. Such law would also inhibit addressing emerging equal employment opportunity issues and stifle the Commission's ability to deal with the wide diversity of agencies' functions, work forces and sizes. EEOC should not be restricted in its effort to develop innovative approaches to achieve a federal work force free of employment discrimination.

EEOC has the power, through revised and updated management directives, to address weaknesses and correct deficiencies identified in the programs of the previous multiyear planning period, while preserving procedures that work well.

The forward evolution of the federal EEO process should not be frozen for the purpose of institutionalizing an enforcement mechanism designed to force a handful of agencies to submit numerical goals and timetables.

Findings

The findings upon which H.R. 3330 is based should be reviewed in light of affirmative action accomplishment reports and plan updates submitted pursuant to EEOC management directives.

During the most recent multiyear planning period, federal agencies have improved representation of minorities and women in their labor forces. Minorities and women are employed in the federal government above the fiscal 1980 civilian labor force rate except white females and Hispanic men and women.

Women and minority groups are now moving into professional and administrative occupations and upward into the higher grades of the civil service; however, it is noted that improvement is still needed in several occupation categories.

Numerous barriers to the employment opportunities of women and minorities in the federal government have been identified and removed since EEOC assumed responsibility for federal EEO in 1979. Our new MD 714 focuses on the elimination of artificial barriers to employment.

Federal agencies have more extensive reporting requirements and affirmative action planning than non-federal employers. Only a handful of federal agencies do not submit affirmative action accomplishment reports and even fewer do not submit affirmative action plan updates that include goals and timetables.

I am submitting for the record work force summaries for four federal agencies that have not developed goals and timetables in the past. Even in these agencies that did not submit timetables, the representation of minorities and women has improved while in all but one instance, the general work force has declined.

Five-Year Plans and Periodic Reports

By detailing in law the content of plans and reports to be submitted by federal agencies, Congress would be imposing a paperwork burden on federal agencies that may be counterproductive to identifying or eliminating problem areas in an ever changing future. Such an inflexible paperwork burden may prevent federal agencies from effectively responding to the needs of a changing work force. MD 714 instructs agencies to implement essentially the same instructions for reports as H.R. 3330, without the rigidity of law.

Data collected pursuant to the EEOC management directive is sufficient to determine the dispersion of employees, the overall work force profile and the presence of employment barriers. Such directives can be updated easily to reflect the unanticipated needs of the public.

Failure by an agency to submit a plan or annual report is now reported in EEOC's annual report to the Congress and the President. Public notice of noncompliance with reporting requirements could be given in the Federal Register under existing authority.

Enforcement

Our purpose is to afford equal employment opportunity in the federal government and to work affirmatively to eliminate barriers to the employment of minorities and women in the federal work force.

We question the necessity of allowing EEOC to sue other federal agencies merely for the purpose of requiring reports. We firmly believe that the commitment of scarce EEOC litigation resources to enforcing reporting requirements is unwise. Moreover, I am advised by the Department of Justice, that having one agency within the executive branch sue another is inconsistent with the unitary executive established by Article II of the Constitution and raises serious questions under the "case or controversy" requirement of Article III.

On-site Examinations and Audits

Management Directive 714 already requires EEOC to implement the on-site examination and audit requirements that would be mandated by H.R. 3330.

In summary, we strongly oppose H.R. 3330, which would not only be unnecessary, but would be counterproductive by hamstringing the necessary flexibility needed by EEOC to carry out the federal EEO program.

Mr. Chairman, I would like to submit for the official hearing record, copies of EEOC's "Annual Report on the Employment of Minorities, Women and Handicapped Individuals in the Federal Government" for fiscal years 1982 through 1986.

I will now respond to any questions you may have.

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DEPARTMENT OF EDUCATION

EDUCATION'S white collar work force went from 4,953 in 1982 to 4,167 in 1986.

TOTALS FOR GROUPS ARE:	1982	1986
White Females	26.9%	23.2%
Blacks	35.8%	40.9%
Hispanics	3.1%	3.5%
Asians	1.3%	1.9%
American Indians	0.3%	0.4%

FEDERAL TRADE COMMISSION

FTC's white collar work force went from 1,358 in 1982 to 1,038 in 1986.

TOTALS FOR GROUPS ARE:	1982	1986
White Females	25.8%	27.0%
Blacks	31.4%	29.5%
Hispanics	1.9%	1.3%
Asians	1.6%	1.0%
American Indians	0.2%	0.0%

DEPARTMENT OF JUSTICE

DOJ's white collar work force went from 51,586 in 1982 to 62,287 in 1986.

TOTALS FOR GROUPS ARE:	1982	1986
White Females	24.1%	24.5%
Blacks	17.5%	17.1%
Hispanics	6.4%	7.9%
Asians	0.9%	1.2%
American Indians	0.4%	0.4%

OFFICE OF PERSONNEL MANAGEMENT

OPM's white collar work force went from 5,830 in 1982 to 5,078 in 1986.

WHITE COLLAR TOTALS FOR GROUPS ARE:	1982	1986
White Females	35.3%	36.2%
Blacks	27.7%	28.2%
Hispanics	3.6%	3.1%
Asians	1.2%	1.4%
American Indians	0.2%	0.2%

EDUCATION

YEAR	TOTAL ALL NUMBER	TOTAL FEMALE NUMBER	%	WHITE FEMALE NUMBER	%	BLACK MALE NUMBER	%	BLACK FEMALE NUMBER	%	HISPANIC MALE NUMBER	%	HISPANIC FEMALE NUMBER	%	ASIAN/ PACIFIC ISLANDER MALE NUMBER	%	ASIAN/ PACIFIC ISLANDER FEMALE NUMBER	%	AMERICAN INDIAN/ ALASKAN NATIVE MALE NUMBER	%	AMERICAN INDIAN/ ALASKAN NATIVE FEMALE NUMBER	%
PROFESSIONAL																					
1982	1459	505	34.6	329	22.5	118	8.1	159	10.9	31	2.1	10	0.7	15	1.0	6	0.4	6	0.4	1	0.1
1983	1312	451	34.4	320	24.4	89	6.8	122	9.3	26	2.0	4	0.3	12	0.9	5	0.4	4	0.3	0	0.0
1984	1228	432	35.2	291	23.7	93	7.6	129	10.5	26	2.1	5	0.4	14	1.1	6	0.5	5	0.4	1	0.1
1985	1194	442	37.0	260	21.8	100	8.4	160	13.4	29	2.4	15	1.3	22	1.8	7	0.6	6	0.5	0	0.0
1986	1106	418	37.8	249	22.5	96	8.7	149	13.5	28	2.5	13	1.2	19	1.7	7	0.6	4	0.4	0	0.0
ADMINISTRATIVE																					
1982	1992	955	47.9	535	26.9	213	10.7	369	18.5	43	2.2	37	1.9	18	0.9	12	0.6	2	0.1	2	0.1
1983	1815	857	47.2	479	26.4	188	10.4	327	18.0	43	2.4	38	2.1	19	1.0	12	0.7	3	0.2	1	0.1
1984	1956	943	48.2	518	26.5	217	11.1	374	19.1	45	2.3	38	1.9	22	1.1	11	0.6	5	0.3	2	0.1
1985	1901	936	49.2	455	23.9	226	11.9	437	23.0	44	2.3	32	1.7	24	1.3	8	0.4	1	0.1	4	0.2
1986	1833	923	50.4	440	24.0	217	11.8	441	24.1	43	2.3	31	1.7	21	1.1	7	0.4	2	0.1	4	0.2
TECHNICAL																					
1982	471	394	83.7	150	31.8	40	8.5	232	49.3	2	0.4	8	1.7	2	0.4	2	0.4	1	0.2	2	0.4
1983	493	401	81.3	160	32.5	40	8.1	232	47.1	2	0.4	5	1.0	3	0.6	1	0.2	1	0.2	3	0.6
1984	423	337	79.7	125	29.6	38	9.0	208	49.2	2	0.5	2	0.5	3	0.7	0	0.0	1	0.2	2	0.5
1985	434	340	78.3	100	23.0	45	10.4	231	53.2	3	0.7	6	1.4	3	0.7	1	0.2	1	0.2	2	0.5
1986	432	335	77.5	95	22.0	48	11.1	233	53.9	3	0.7	4	0.9	3	0.7	1	0.2	1	0.2	2	0.5
CLERICAL																					
1982	1041	925	88.9	321	30.8	66	6.3	575	55.2	2	0.2	18	1.7	1	0.1	8	0.8	0	0.0	3	0.3
1983	947	850	89.8	335	35.4	54	5.7	492	52.0	2	0.2	14	1.5	1	0.1	6	0.6	0	0.0	3	0.3
1984	912	831	91.1	335	36.7	39	4.3	469	51.4	1	0.1	14	1.5	0	0.0	9	1.0	0	0.0	4	0.4
1985	912	805	88.3	209	22.9	51	5.6	559	61.3	3	0.3	21	2.3	3	0.3	14	1.5	1	0.1	2	0.2
1986	789	701	88.8	181	22.9	37	4.7	483	61.2	4	0.5	20	2.5	3	0.4	15	1.9	1	0.1	2	0.3
OTHER																					
1982	0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
1983	32	6	18.8	5	15.6	5	15.6	1	3.1	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
1984	10	5	50.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
1985	7	4	57.1	4	57.1	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
1986	7	3	42.9	3	42.9	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
TOTAL WHITE COLLAR																					
1982	4963	2779	56.0	1335	26.9	437	8.8	1335	26.9	78	1.6	73	1.5	36	0.7	28	0.6	9	0.2	8	0.2
1983	4599	2565	55.8	1299	28.2	376	8.2	1174	25.5	73	1.6	61	1.3	35	0.8	24	0.5	8	0.2	7	0.2
1984	4529	2548	56.3	1269	28.0	387	8.5	1180	26.1	74	1.6	59	1.3	39	0.9	26	0.6	11	0.2	9	0.2
1985	4448	2527	56.8	1028	23.1	422	9.5	1387	31.2	79	1.8	74	1.7	52	1.2	30	0.7	9	0.2	8	0.2
1986	4167	2380	57.1	968	23.2	398	9.6	1306	31.3	78	1.9	68	1.6	48	1.2	30	0.7	8	0.2	8	0.2
TOTAL BLUE COLLAR																					
1982	22	1	4.5	0	0.0	15	68.2	1	4.5	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
1983	21	1	4.8	0	0.0	15	71.4	1	4.8	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
1984	19	1	5.3	0	0.0	13	68.4	1	5.3	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
1985	18	1	5.6	0	0.0	13	72.2	1	5.6	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
1986	15	1	6.7	0	0.0	10	66.7	1	6.7	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
TOTAL EDUCATION																					
1982	4985	2780	55.8	1335	26.8	452	9.1	1336	26.8	78	1.6	73	1.5	36	0.7	28	0.6	9	0.2	8	0.2
1983	4620	2566	55.5	1299	28.1	391	8.5	1175	25.4	73	1.6	61	1.3	35	0.8	24	0.5	8	0.2	7	0.2
1984	4548	2549	56.0	1269	27.9	400	8.8	1181	26.0	74	1.6	59	1.3	39	0.9	26	0.6	11	0.2	9	0.2
1985	4466	2528	56.6	1028	23.0	435	9.7	1388	31.1	79	1.8	74	1.7	52	1.2	30	0.7	9	0.2	8	0.2
1986	4182	2381	56.9	968	23.1	408	9.8	1307	31.3	78	1.9	68	1.6	48	1.1	30	0.7	8	0.2	8	0.2

FEDERAL TRADE COMMISSION

YEAR	TOTAL ALL NUMBER	TOTAL FEMALE NUMBER	%	WHITE FEMALE NUMBER	%	BLACK MALE NUMBER	%	BLACK FEMALE NUMBER	%	HISPANIC MALE NUMBER	%	HISPANIC FEMALE NUMBER	%	ASIAN/ PACIFIC ISLANDER MALE NUMBER	%	ASIAN/ PACIFIC ISLANDER FEMALE NUMBER	%	AMERICAN INDIAN/ ALASKAN NATIVE MALE NUMBER	%	AMERICAN INDIAN/ ALASKAN NATIVE FEMALE NUMBER	%
PROFESSIONAL																					
1982	'640	161	25.2	135	21.1	33	5.2	17	2.7	7	1.1	4	0.6	10	1.6	4	0.6	1	0.2	1	0.2
1983	553	138	25.0	120	21.7	28	5.1	13	2.4	3	0.5	3	0.5	8	1.4	2	0.4	0	0.0	0	0.0
1984	558	150	26.9	129	23.1	28	5.0	16	2.9	4	0.7	3	0.5	5	0.9	1	0.2	0	0.0	1	0.2
1985	559	162	29.0	143	25.6	24	4.3	15	2.7	4	0.7	1	0.2	7	1.3	2	0.4	0	0.0	1	0.2
1986	523	147	28.1	133	25.4	20	3.8	13	2.5	4	0.8	0	0.0	5	1.0	1	0.2	0	0.0	0	0.0
ADMINISTRATIVE																					
1982	246	142	57.7	93	37.8	18	7.3	44	17.9	2	0.8	4	1.6	2	0.8	1	0.4	0	0.0	0	0.0
1983	222	124	55.9	84	37.8	17	7.7	35	15.8	2	0.9	4	1.8	1	0.5	1	0.5	0	0.0	0	0.0
1984	223	130	58.3	83	37.2	21	9.4	42	18.8	1	0.4	4	1.8	1	0.4	1	0.4	0	0.0	0	0.0
1985	210	126	60.0	82	39.0	16	7.6	39	18.6	1	0.5	3	1.4	1	0.5	2	1.0	0	0.0	0	0.0
1986	204	119	58.3	72	35.3	14	6.9	42	20.6	1	0.5	4	2.0	1	0.5	1	0.5	0	0.0	0	0.0
TECHNICAL																					
1982	92	64	69.6	16	17.4	19	20.7	48	52.2	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
1983	93	69	74.2	14	15.1	16	17.2	54	58.1	0	0.0	1	1.1	0	0.0	0	0.0	0	0.0	0	0.0
1984	84	64	76.2	15	17.9	11	13.1	49	58.3	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
1985	80	63	78.8	19	23.8	10	12.5	44	55.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
1986	69	54	78.3	17	24.6	8	11.6	36	52.2	0	0.0	1	1.4	1	1.4	0	0.0	0	0.0	0	0.0
CLERICAL																					
1982	380	331	87.1	106	27.9	34	8.9	214	56.3	0	0.0	8	2.1	2	0.5	3	0.8	0	0.0	0	0.0
1983	331	292	88.2	85	25.7	26	7.9	199	60.1	0	0.0	4	1.2	2	0.6	4	1.2	0	0.0	0	0.0
1984	311	279	89.7	73	23.5	22	7.1	200	64.3	0	0.0	4	1.3	2	0.6	2	0.6	0	0.0	0	0.0
1985	288	260	90.3	67	23.3	18	6.3	189	65.6	0	0.0	3	1.0	2	0.7	0	0.0	0	0.0	1	0.3
1986	242	221	91.3	58	24.0	13	5.4	160	66.1	0	0.0	3	1.2	1	0.4	0	0.0	0	0.0	0	0.0
OTHER																					
1982	0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
1983	5	1	20.0	1	20.0	1	20.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
1984	0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
1985	0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
1986	0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
TOTAL WHITE COLLAR																					
1982	1358	698	51.4	350	26.8	104	7.7	323	23.8	9	0.7	16	1.2	14	1.0	8	0.6	1	0.1	1	0.1
1983	1204	624	51.8	304	25.2	88	7.3	301	25.0	5	0.4	12	1.0	11	0.9	7	0.6	0	0.0	0	0.0
1984	1176	623	53.0	300	25.5	82	7.0	307	26.1	5	0.4	11	0.9	8	0.7	4	0.3	0	0.0	1	0.1
1985	1137	611	53.7	311	27.4	68	6.0	287	25.2	5	0.4	7	0.6	10	0.9	4	0.4	0	0.0	2	0.2
1986	1038	541	52.1	280	27.0	55	5.3	251	24.2	5	0.5	8	0.8	8	0.8	2	0.2	0	0.0	0	0.0
TOTAL BLUE COLLAR																					
1982	21	1	4.8	0	0.0	14	66.7	1	4.8	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
1983	18	1	5.6	0	0.0	12	66.7	1	5.6	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
1984	19	2	10.5	0	0.0	12	63.2	2	10.5	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
1985	19	2	10.5	0	0.0	12	63.2	2	10.5	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
1986	24	3	12.5	0	0.0	13	54.2	3	12.5	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
TOTAL FEDERAL TRADE COMMISSION																					
1982	1379	699	50.7	350	25.4	118	8.6	324	23.5	9	0.7	16	1.2	14	1.0	8	0.6	1	0.1	1	0.1
1983	1222	625	51.1	304	24.9	100	8.2	302	24.7	5	0.4	12	1.0	11	0.9	7	0.6	0	0.0	0	0.0
1984	1195	625	52.3	300	25.1	94	7.9	309	25.9	5	0.4	11	0.9	8	0.7	4	0.3	0	0.0	1	0.1
1985	1156	613	53.0	311	26.9	80	6.9	289	25.0	5	0.4	7	0.6	10	0.9	4	0.3	0	0.0	2	0.2
1986	1062	544	51.2	280	26.4	68	6.4	254	23.9	5	0.5	8	0.8	8	0.8	2	0.2	0	0.0	0	0.0

JUSTICE

YEAR	TOTAL ALL NUMBER	TOTAL FEMALE NUMBER	%	WHITE FEMALE NUMBER	%	BLACK MALE NUMBER	%	BLACK FEMALE NUMBER	%	HISPANIC MALE NUMBER	%	HISPANIC FEMALE NUMBER	%	ASIAN/ PACIFIC ISLANDER MALE NUMBER	%	ASIAN/ PACIFIC ISLANDER FEMALE NUMBER	%	AMERICAN INDIAN/ ALASKAN NATIVE MALE NUMBER	%	AMERICAN INDIAN/ ALASKAN NATIVE FEMALE NUMBER	%
PROFESSIONAL																					
1982	5412	1235	22.8	1062	19.6	260	4.8	126	2.3	95	1.8	33	0.6	34	0.6	13	0.2	12	0.2	1	0.02
1983	5733	1402	24.5	1189	20.7	245	4.3	152	2.7	102	1.8	43	0.8	36	0.6	16	0.3	12	0.2	2	0.03
1984	6068	1520	25.0	1303	21.5	248	4.1	153	2.5	111	1.8	44	0.7	39	0.6	18	0.3	13	0.2	2	0.03
1985	6314	1638	25.9	1414	22.4	246	3.9	161	2.5	110	1.7	44	0.7	39	0.6	17	0.3	12	0.2	2	0.03
1986	6476	1762	27.2	1531	23.6	236	3.6	167	2.6	115	1.8	46	0.7	46	0.7	15	0.2	11	0.2	3	0.0
ADMINISTRATIVE																					
1982	18237	3008	16.5	2235	12.3	798	4.4	512	2.8	923	5.1	202	1.1	140	0.8	45	0.2	74	0.4	14	0.1
1983	19040	3138	16.5	2374	12.5	847	4.4	512	2.7	1001	5.3	205	1.1	139	0.7	34	0.2	77	0.4	13	0.1
1984	20837	3714	17.8	2749	13.2	931	4.5	609	2.9	1145	5.5	259	1.2	202	1.0	81	0.4	78	0.4	16	0.1
1985	22535	4360	19.3	3204	14.2	1101	4.9	739	3.3	1282	5.7	302	1.3	234	1.0	96	0.4	90	0.4	19	0.1
1986	23009	4673	20.3	3427	14.9	1146	5.0	796	3.5	1314	5.7	325	1.4	239	1.0	104	0.5	91	0.4	21	0.1
TECHNICAL																					
1982	6369	3530	55.4	2148	33.7	398	6.2	1032	16.2	230	3.6	147	2.3	28	0.4	26	0.4	10	0.2	7	0.1
1983	6065	3483	57.4	2144	35.4	419	6.9	1156	19.1	270	4.5	147	2.4	32	0.5	28	0.5	17	0.3	12	0.2
1984	7099	4189	59.0	2606	36.7	470	6.6	1336	18.8	331	4.7	184	2.6	38	0.5	45	0.6	17	0.2	18	0.3
1985	7497	4455	59.4	2732	36.4	513	6.8	1457	19.4	361	4.8	200	2.7	42	0.6	51	0.7	15	0.2	15	0.2
1986	7665	4587	59.8	2825	36.9	521	6.8	1466	19.1	365	4.8	224	2.9	44	0.6	57	0.7	14	0.2	15	0.2
CLERICAL																					
1982	13491	11443	84.8	6710	49.7	682	5.1	4035	29.9	205	1.5	542	4.0	53	0.4	122	0.9	5	0.04	34	0.3
1983	13523	11576	85.6	6797	50.3	585	4.3	3950	29.2	204	1.5	613	4.5	47	0.3	144	1.1	16	0.12	72	0.5
1984	13936	11977	85.9	6992	50.2	598	4.3	4139	29.7	155	1.1	637	4.6	53	0.4	161	1.2	7	0.05	48	0.3
1985	13521	11729	86.7	6769	50.1	526	3.9	4079	30.2	145	1.1	698	5.2	52	0.4	154	1.1	5	0.04	29	0.2
1986	13457	11713	87.0	6634	49.3	508	3.8	4215	31.3	133	1.0	700	5.2	55	0.4	139	1.0	5	0.0	25	0.2
OTHER																					
1982	8077	514	6.4	296	3.7	1006	12.5	176	2.2	903	11.2	41	0.5	23	0.3	0	0.0	45	0.6	1	0.01
1983	11676	1665	14.3	1067	9.1	1355	11.6	485	4.2	1130	9.7	91	0.8	61	0.5	18	0.2	58	0.5	4	0.03
1984	10628	1180	11.1	670	6.3	1292	12.2	357	3.4	1127	10.6	71	0.7	53	0.5	3	0.03	53	0.5	4	0.04
1985	10731	1170	10.9	731	6.8	1168	10.9	338	3.1	1432	13.3	96	0.9	47	0.4	3	0.03	63	0.6	2	0.02
1986	11680	1322	11.3	842	7.2	1236	10.6	370	3.2	1569	13.4	101	0.9	56	0.5	6	0.05	69	0.6	3	0.03
TOTAL WHITE COLLAR																					
1982	51586	19730	38.2	12451	24.1	3144	6.1	5881	11.4	2356	4.6	965	1.9	278	0.5	206	0.4	146	0.3	57	0.1
1983	56037	21264	37.9	13574	24.2	3451	6.2	6255	11.2	2707	4.8	1099	2.0	315	0.6	240	0.4	180	0.3	103	0.2
1984	58568	22580	38.6	14320	24.5	3539	6.0	6594	11.3	2869	4.9	1195	2.0	385	0.7	308	0.5	168	0.3	88	0.2
1985	60598	23352	38.5	14850	24.5	3554	5.9	6774	11.2	3330	5.5	1340	2.2	414	0.7	321	0.5	185	0.3	67	0.1
1986	62287	24057	38.6	15259	24.5	3647	5.9	7014	11.3	3496	5.6	1396	2.2	440	0.7	321	0.5	190	0.3	67	0.1
TOTAL BLUE COLLAR																					
1982	1864	48	2.6	32	1.7	234	12.6	16	0.9	137	7.3	0	0.0	13	0.7	0	0.0	0	0.0	0	0.0
1983	1680	45	2.7	30	1.8	204	12.1	13	0.8	159	9.5	2	0.1	10	0.6	0	0.0	14	0.8	0	0.0
1984	2274	124	5.5	57	2.5	312	13.7	66	2.9	167	7.3	2	0.1	18	0.8	0	0.0	16	0.7	1	0.04
1985	2416	147	6.1	72	3.0	319	13.2	72	3.0	194	8.0	2	0.1	17	0.7	0	0.0	24	1.0	1	0.04
1986	2587	183	7.1	90	3.5	326	12.6	86	3.3	203	7.8	4	0.2	15	0.6	1	0.0	25	1.0	1	0.04
TOTAL JUSTICE																					
1982	53450	19778	37.0	12483	23.4	3378	6.3	5897	11.0	2493	4.7	965	1.8	291	0.5	206	0.4	146	0.3	57	0.1
1983	57717	21309	36.9	13601	23.6	3655	6.3	6268	10.9	2866	5.0	1101	1.9	325	0.6	240	0.4	194	0.3	103	0.2
1984	60842	22704	37.3	14377	23.6	3851	6.3	6660	10.9	3036	5.0	1197	2.0	403	0.7	308	0.5	184	0.3	89	0.1
1985	63014	23499	37.2	14922	23.6	3873	6.1	6846	10.9	3524	5.6	1342	2.1	431	0.7	321	0.5	209	0.3	68	0.1
1986	64874	24240	37.4	15349	23.7	3973	6.1	7100	10.9	3699	5.7	1400	2.2	455	0.7	322	0.5	215	0.3	68	0.1

OFFICE OF PERSONNEL MANAGEMENT

YEAR	TOTAL ALL NUMBER	TOTAL FEMALE NUMBER	%	WHITE FEMALE NUMBER	%	BLACK MALE NUMBER	%	BLACK FEMALE NUMBER	%	HISPANIC MALE NUMBER	%	HISPANIC FEMALE NUMBER	%	ASIAN/ PACIFIC ISLANDER MALE NUMBER	%	ASIAN/ PACIFIC ISLANDER FEMALE NUMBER	%	AMERICAN INDIAN/ ALASKAN NATIVE MALE NUMBER	%	AMERICAN INDIAN/ ALASKAN NATIVE FEMALE NUMBER	%
PROFESSIONAL																					
1982	232	72	31.0	58	25.0	16	6.9	10	4.3	1	0.4	2	0.9	1	0.4	2	0.9	0	0.0	0	0.0
1983	187	51	27.3	38	20.3	18	9.6	9	4.8	0	0.0	1	0.5	1	0.5	3	1.6	0	0.0	0	0.0
1984	203	57	28.1	38	18.7	20	9.9	13	6.4	1	0.5	2	1.0	1	0.5	4	2.0	0	0.0	0	0.0
1985	195	58	29.7	40	20.5	19	9.7	14	7.2	1	0.5	1	0.5	1	0.5	3	1.5	0	0.0	0	0.0
1986	167	49	29.3	32	19.2	18	10.8	13	7.8	0	0.0	1	0.6	1	0.6	3	1.8	0	0.0	0	0.0
ADMINISTRATIVE																					
1982	2756	1011	36.7	693	25.1	194	7.0	263	9.5	61	2.2	38	1.4	10	0.4	15	0.5	5	0.2	2	0.1
1983	2498	917	36.7	622	24.9	171	6.8	248	9.9	55	2.2	32	1.3	11	0.4	13	0.5	5	0.2	2	0.1
1984	2670	1037	38.8	687	25.7	169	6.3	303	11.3	66	2.5	30	1.1	13	0.5	14	0.5	5	0.2	3	0.1
1985	2580	1033	40.0	698	27.1	172	6.7	297	11.5	63	2.4	22	0.9	10	0.4	13	0.5	4	0.2	3	0.1
1986	2455	1024	41.7	685	27.9	164	6.7	301	12.3	55	2.2	22	0.9	9	0.4	14	0.6	3	0.1	2	0.1
TECHNICAL																					
1982	779	619	79.5	292	37.5	59	7.6	306	39.3	6	0.8	10	1.3	2	0.3	10	1.3	0	0.0	1	0.1
1983	709	562	79.3	249	35.1	60	8.5	298	42.0	5	0.7	8	1.1	2	0.3	6	0.8	0	0.0	1	0.1
1984	731	582	79.6	267	36.5	59	8.1	301	41.2	7	1.0	8	1.1	2	0.3	5	0.7	0	0.0	1	0.1
1985	710	570	80.3	251	35.4	65	9.2	303	42.7	6	0.8	7	1.0	2	0.3	8	1.1	0	0.0	1	0.1
1986	607	485	79.9	189	31.1	59	9.7	277	45.6	5	0.8	8	1.3	1	0.2	10	1.6	0	0.0	1	0.2
CLERICAL																					
1982	2055	1784	86.8	1011	49.2	91	4.4	673	32.7	18	0.9	71	3.5	7	0.3	24	1.2	1	0.05	5	0.2
1983	1750	1523	87.0	903	51.6	76	4.3	535	30.6	14	0.8	57	3.3	6	0.3	24	1.4	1	0.1	4	0.2
1984	1998	1736	86.9	1034	51.8	89	4.5	612	30.6	16	0.8	56	2.8	5	0.3	28	1.4	0	0.0	6	0.3
1985	1946	1628	83.7	988	50.8	98	5.0	554	28.5	18	0.9	56	2.9	9	0.5	22	1.1	1	0.1	8	0.4
1986	1848	1529	82.7	931	50.4	85	4.6	517	28.0	16	0.9	49	2.7	5	0.3	26	1.4	0	0.0	6	0.3
OTHER																					
1982	8	7	87.5	4	50.0	1	12.5	1	12.5	0	0.0	1	12.5	0	0.0	1	12.5	0	0.0	0	0.0
1983	4	3	75.0	1	25.0	0	0.0	2	50.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
1984	4	3	75.0	1	25.0	0	0.0	2	50.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
1985	4	3	75.0	2	50.0	0	0.0	1	25.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
1986	1	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
TOTAL WHITE COLLAR																					
1982	5830	3493	59.9	2058	35.3	361	6.2	1253	21.5	86	1.5	122	2.1	20	0.3	52	0.9	6	0.1	8	0.1
1983	5148	3056	59.4	1813	35.2	325	6.3	1092	21.2	74	1.4	98	1.9	20	0.4	46	0.9	6	0.1	7	0.1
1984	5606	3415	60.9	2027	36.2	337	6.0	1231	22.0	90	1.6	96	1.7	21	0.4	51	0.9	5	0.1	10	0.2
1985	5435	3292	60.6	1979	36.4	354	6.5	1169	21.5	88	1.6	86	1.6	22	0.4	46	0.8	5	0.1	12	0.2
1986	5078	3087	60.8	1837	36.2	326	6.4	1108	21.8	76	1.5	80	1.6	16	0.3	53	1.0	3	0.1	9	0.2
TOTAL BLUE COLLAR																					
1982	64	9	14.1	0	0.0	34	53.1	8	12.5	1	1.6	1	1.6	0	0.0	0	0.0	0	0.0	0	0.0
1983	60	9	15.0	0	0.0	29	48.3	8	13.3	1	1.7	1	1.7	0	0.0	0	0.0	0	0.0	0	0.0
1984	57	8	14.0	0	0.0	27	47.4	7	12.3	1	1.8	1	1.8	0	0.0	0	0.0	0	0.0	0	0.0
1985	54	9	16.7	1	1.9	23	42.6	7	13.0	0	0.0	1	1.9	0	0.0	0	0.0	0	0.0	0	0.0
1986	52	8	15.4	1	1.9	20	38.5	6	11.5	0	0.0	1	1.9	0	0.0	0	0.0	0	0.0	0	0.0
TOTAL OPM																					
1982	5894	3502	59.4	2058	34.9	395	6.7	1261	21.4	87	1.5	123	2.1	20	0.3	52	0.9	6	0.1	8	0.1
1983	5208	3065	58.9	1813	34.8	354	6.8	1100	21.1	75	1.4	99	1.9	20	0.4	46	0.9	6	0.1	7	0.1
1984	5663	3423	60.4	2027	35.8	364	6.4	1238	21.9	91	1.6	97	1.7	21	0.4	51	0.9	5	0.1	10	0.2
1985	5489	3301	60.1	1980	36.1	377	6.9	1176	21.4	88	1.6	87	1.6	22	0.4	46	0.8	5	0.1	12	0.2
1986	5130	3095	60.3	1838	35.8	346	6.7	1114	21.7	76	1.5	81	1.6	16	0.3	53	1.0	3	0.1	9	0.2

LAWYERS' COMMITTEE
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BEFORE THE SUBCOMMITTEE ON EMPLOYMENT OPPORTUNITIES OF THE HOUSE COMMITTEE ON EDUCATION AND LABOR

February 9, 1988

TESTIMONY OF THE LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW ON H.R. 3330, ON THE DEVELOPMENT BY FEDERAL AGENCIES OF AFFIRMATIVE ACTION PLANS COVERING THEIR OWN EMPLOYMENT PRACTICES, AND ON THE EEOC'S ACTIVITIES WITH RESPECT TO FEDERAL-SECTOR EMPLOYMENT

by

Richard T. Seymour[1]

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[1] Director, Employment Discrimination Project of the Lawyers' Committee for Civil Rights Under Law.

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by

Richard T. Seymour[1]

A. Introduction

Mr. Chairman and Members of the Subcommittee, we appreciate the opportunity to provide testimony here today.

We strongly support the concepts set forth in H.R. 1330, the need for Federal agencies to have adequate affirmative action plans with analyses of adverse impact and underrepresentation of women and minorities, and the need for an effective means of dealing with the problems caused by "scofflaw" agencies refusing to develop adequate plans or refusing to comply with the requirements of the EEOC with respect to such plans. We believe that some provisions of the bill require amendment in order to conform with the

[1] Director, Employment Discrimination Project of the Lawyers' Committee for Civil Rights Under Law.

Supreme Court's guidance for permissible affirmative action, and we also have a few suggestions to strengthen the measure.

As you know, the Lawyers' Committee was founded in 1963, when President Kennedy summoned the leaders of the American Bar to a meeting at the White House. In response to the widespread denial of civil rights to blacks in the South, President Kennedy requested the lawyers present at the meeting to form a new civil rights organization which would provide legal representation to the victims of such discrimination. From 1963 to the present, the Lawyers' Committee and its local offices in Washington, Philadelphia, Boston, Chicago, Jackson, Denver, Los Angeles and San Francisco have represented the interests of minorities and of women in thousands of lawsuits. Many of the nation's leading law firms have joined with us in providing such representation.

The subject of today's hearings is of particular interest to the Lawyers' Committee. On July 25, 1984, William H. Brown III testified on behalf of the Lawyers' Committee at hearings held by the Subcommittee on Government Activities and Transportation of the House Committee on Government Operations. Mr. Brown, as I am sure you are aware, is a former Chairman of the Equal Employment Opportunity Commission during the Nixon Administration, and is currently a partner in the Philadelphia firm of Schnader, Harrison, Segal & Lewis, and is a member of the Board of Trustees of the Lawyers' Committee. His testimony described in detail the nature of the affirmative-action obliga-

tions imposed on Federal agencies by statute, and my testimony today will not repeat his points. I ask the Chairman's permission to make his testimony in 1984 a part of this hearing record as well.

B. The Basis for Requiring Federal Agencies to Prepare Affirmative Action Plans

Section 717(b) of the Civil Rights Act of 1964, as amended by the Equal Employment Opportunity Act of 1972,[2] requires each Federal agency to prepare national and regional equal employment opportunity plans in order to "maintain an affirmative program of equal employment opportunity for all such employees and applicants for employment.[3] We suggest that this

---

[2] Pub.L. 92-261, 86 Stat. 103, 111-12.

[3] Sec. 717(b) of the Act, 42 U.S.C. § 2000e-16(b), as amended, states in part:

> The Equal Employment Opportunity Commission shall---
>
> (1) be responsible for the annual review and approval of a national and regional equal employment opportunity plan which each department and agency and each appropriate unit referred to in subsection (a) of this section shall submit in order to maintain an affirmative program of equal employment opportunity for all such employees and applicants for employment;
>
> (2) be responsible for the review and evaluation of the operation of all agency equal employment opportunity programs, periodically obtaining and publishing (on at least a semiannual basis) progress reports from each such department, agency, or unit;
>
> * * *
>
> The head of each such department, agency, or unit shall comply with such rules, regulations, orders, and instructions which shall include a provision that an employee or applicant for employment shall be notified of any final action taken on any complaint of discrimi-

language requires each Federal agency to develop the kinds of affirmative action plans used by American business, complete with analyses of underutilization and the development of reasonable goals and timetables where significant underutilization has been found.

There can be little question over the meaning of the statutory terms, because their history is clear. Sec. 717 originated in the Senate version of the 1972 amendments to Title VII, and the Senate Committee Report gave several "legislative directions" specifying the manner in which the statutory command should be carried out. For example, the Report stated that the plans to be reviewed by the Commission[4] were to be:[5]

> nation filed by him thereunder. The plan submitted by each department, agency, and unit shall include, but not be limited to:
>
> (1) provision for the establishment of training and education programs designed to provide a maximum opportunity for employees to advance so as to perform at their highest potential; and
>
> (2) a description of the qualifications in terms of training and experience relating to equal employment opportunity for the principal and operating officials of each such department, agency, or unit responsible for carrying out the equal employment opportunity program and of the allocation of personnel and resources proposed by such department, agency, or unit to carry out its equal employment opportunity program.
>
> * * *

[4] The 1972 amendments gave the responsibility of reviewing such plans to the Civil Service Commission. CSC's functions in this area were transferred to the EEOC by Reorganization Plan No. One of 1978, 43 Fed.Reg. 19807 (1978), 7 U.S. Code Cong. & Admin. News 9799 (1978).

> developed with full consideration of particular problems and employment opportunity needs of individual minority group populations within each geographic area.

The Committee Report continued with a directive as to analyses of underutilization of minorities:[6]

> ...[T]he Committee expects the Commission to require that agency plans include specific regional plans for particularly large Federal regional installations and other regional offices with particularly deficient records of progress in equal employment opportunity. ...
>
> The bill requires the Commission to obtain, on at least a semi-annual basis, minority group employment and such other data as are necessary for effective evaluation by the Commission and the public of each department's, agency's or unit's record of equal employment opportunity achievement ... .

The Senate Committee also directed the Commission to:[7]

> ...study and determine the appropriate allocation of personnel and resources committed to carrying out program responsibilities including necessary affirmative action.

In committee, Senator Cranston had offered the amendment which ultimately became § 717 of the Act. On the floor of the Senate, he later explained what he thought his amendment would accomplish. The first two accomplishments he mentioned involved affirmative action:[8]

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[5] Senate Committee on Labor and Public Welfare, Report No. 92-415 (92nd Cong., 1st Sess.), at 15.

[6] Id. at 15-16.

[7] Id. at 17.

[8] 118 Cong. Rec. , Legislative History of the Equal Employment Opportunity Act of 1972, prepared by the Subcommittee on Labor of the Senate Committee on Labor and Public Welfare

> My Federal Government EEO amendment included in the committee bill would:
>
> First. Put the Congress on record in favor of maximum affirmative action under Civil Service Commission direction to provide Federal jobs and real advancement opportunities for minority groups in Federal service. ...
>
> Second. Specifically charge the Civil Service Commission with the responsibility to require all agencies to draw up affirmative action plans and see that they are carried out.

Senator Cranston continued, stating:[9]

> This requires that Federal agencies make a special effort to employ and promote qualified minority persons according to their relative proportions in the population of the area surrounding agency field offices. ...

At the time of the 1972 amendments, of course, Congress was quite familiar with the types of affirmative action plans required by the Office of Federal Contract Compliance with respect to government contractors under Executive Order 11246. Indeed, § 13 of the 1972 amendments inserted into Title VII a new § 718, which regulated the denial, suspension, and termination of government contracts by OFCC.[10]

On the face of the matter, it seems clear that the kinds of affirmative action programs Congress mandated in 1972 were the same kinds of programs already familiar to it through the government contractor programs under Executive Order 11246.

(92nd Cong., 2nd Sess., 1972) at 1744.

[9] Id at 1745.

[10] 86 Stat. 113. The provision is codified at 42 U.S.C. § 2000e-17.

To assert that analyses of underutilization of minorities (including women) and appropriate goals and timetables remedying deficiencies were not part of the Congressional understanding at the time of the 1972 amendments would require a strained and unlikely reading of the legislative language and history.

C. Sec. 703(j) of Title VII of the Civil Rights Act of 1964 Does Not Bar Affirmative Action Plans

1. The Justice Department's Past Position on These Issues

During this Subcommittee's July 23, 1985 hearing on H.R. 781,[11] W. Lawrence Wallace, Acting Assistant Attorney General for Administration, testified that the use of numerical hiring goals was improper because § 703(j) of Title VII, 42 U.S.C. § 2000e-2(j), disavowed them.[12] In practice, the Department of Justice has in the past relied on § 703(j) both to oppose the kinds of statistical comparisons required in AAP's to

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[11] The formal title of the hearing was "The Equal Employment Opportunity Commission Collection of Federal Affirmative Action Goals and Timetables and Enforcement of Federal Sector EEO Complaints", Serial No. 99-24.

[12] Sec. 703(j) states in pertinent part:

> (j) Nothing contained in this title shall be interpreted to require any employer ... subject to this title to grant preferential treatment to any individual or to any group because of the race, color, religion, sex, or national origin of such individual or group on account of an imbalance which may exist with respect to the total number or percentage of persons of any race, color, religion, sex, or national origin employed by any employer ... in comparison with the total number or percentage of persons of such race, color, religion, sex, or national origin in any community, State, section, or other area, or in the available work force in any community, State, section, or other area.

identify "problem areas" where minorities or women are significantly underrepresented,[13] and to oppose the use of remedial goals and timetables where a manifest imbalance has been found. Perhaps the Justice Department has by now changed its position, in light of decisions handed down since its 1985 testimony.

2. The Supreme Court's Decision in Int'l Bhd. of Teamsters v. United States

The Supreme Court has made clear that § 703(j) does not prevent either kind of activity. In International Brotherhood of Teamsters v. United States, 431 U.S. 324, 339-40, 52 L.Ed.2d 396, 417-18, 97 S.Ct. 1843 (1977), a decision recently re-affirmed, the Court unanimously held that statistical evidence, by itself, could prove a prima facie case of discrimination. In footnote 20, the Court elaborated:

> Petitioners argue that statistics, at least those comparing the racial composition of an employer's work force to the composition of the population at large, should never be given decisive weight in a Title VII case because to do so would conflict with § 703(j) of the Act ... .
>
> The argument fails in this case because the statistical evidence was not offered or used to support an erroneous theory that Title VII requires an employer's work force to be racially balanced. Statistics showing racial or ethnic

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[13] Inconsistently, the Justice Department still routinely makes comparisons between an employer's workforce and the local civilian labor force and applicant pool, to decide whether to bring a Title VII enforcement action against the employer. The Department still routinely relies on such analyses in order to prove its cases. Where the Justice Department properly relies on such tools for enforcing Title VII, we do not understand how it can object to employers' using the same told to see if they have problems.

> imbalance are probative in a case such as this one only because such imbalance is often a telltale sign of purposeful discrimination; absent explanation, it is ordinarily to be expected that nondiscriminatory hiring practices will in time result in a work force more or less representative of the racial and ethnic composition of the population in the community from which employees are hired. Evidence of longlasting and gross disparity between the composition of a work force and that of the general population thus may be significant even though § 703(j) makes clear that Title VII imposes no requirement that a work force mirror the general population. See, e.g., United States v. Sheet Metal Workers Local 36, 416 F2d 123, 127 n 7 (CA8). Considerations such as small sample size may, of course, detract from the value of such evidence, see, e.g., Mayor of Philadelphia v. Educational Equality League, 415 US 605, 620-21, 39 L Ed 2d 630, 94 S Ct 1323, and evidence showing that the figures for the general population might not accurately reflect the pool of qualified job applicants would also be relevant. Ibid. See generally Schlei & Grossman, supra, n 15, at 1161-1193.
>
> "Since the passage of the Civil Rights Act of 1964, the courts have frequently relied upon statistical evidence to prove a violation. ... In many cases the only available avenue of proof is the use of racial statistics to uncover clandestine and covert discrimination by the employer or union involved." United States v. Ironworkers Local 86, 443 F2d, at 551. ...

Thus, there is no room for argument that § 703(j) prohibits the use of relevant[14] statistical comparisons in order to identify

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[14] Legitimate qualifications must always be taken into consideration. In filling positions for which professional training is required, for example, only those possessing the training are eligible, and any comparison of the employer's professional workforce must be to that part of the labor pool possessing the necessary qualifications. The same is true for any nonprofessional job requiring skills or abilities which are not evenly distributed throughout the local civilian labor force.

That said, it is nonetheless both common and proper to use raw data on the civilian labor force or on applicant flow, not broken down by qualifications, to identify those areas requiring

"problem areas" in which there is significant underutilization of minorities or of women.

3. The Supreme Court's Decision in Johnson v. Transportation Agency of Santa Clara County

In Johnson v. Transportation Agency of Santa Clara County, 480 U.S. ____, 94 L.Ed.2d 615, 108 S.Ct. ____ (1987), the Court rejected a challenge to the public employer's affirmative action plan. The decision upheld, by a vote of 6 to 3, the use of Santa Clara County's gender-conscious affirmative action plan to effect the promotion of a woman to the skilled craft position of Dispatcher. No woman had ever held this job before; indeed, no woman had ever worked as a craft worker in the County before, even though the County had 238 craft employees at the time of the selection.

The decision is important because the county's plan followed the same approach used by government contractors under Executive Order 11246: the county analyzed the local labor force and figured out the availability of women and minorities for the kinds of jobs the county had; the county adopted the long-term goal of having its workforce come up to the percentages of women and minorities in the available labor pool; the county performed an under-utilization analysis to see where its problem areas

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a further look. Usually, the availability of minorities and women is greater among the entire civilian labor force than among the "qualified" civilian labor force. Where the general data show that there is not even a potential problem, there is not much point in requiring the employer the time and expense of performing underutilization analyses and identifying the proportions of the qualified labor pool who possess the required qualifications.

were; the county's plan provided that selecting officials take gender or race into account where there was substantial under-utilization of women or minorities; and the county provided for the involvement of its own affirmative-action officials in the selection process for job categories with significant under-representation.

The Justice Department's amicus brief attacked each of these steps as sinister evidence of intentional discrimination in violation of Title VII. Its brief was really an indirect attack on the Executive Order program. It argued that employers had to show not only that there was substantial under-representation of women or minorities before they could adopt an affirmative-action plan, but also that their own past discrimination was the proximate cause of the under-representation. It argued that employers adopting affirmative action plans should be compelled to walk a legal tightrope among admitting past discrimination, opening themselves up to lawsuits by women and minorities on the one hand, and being liable to whites and males in reverse discrimination lawsuits on the other hand. It asked the Court for a standard that "creates a tension" for such employers. In plain language, the Justice Department wanted employers to have to jump through hoops before they could take voluntary action to remedy significant under-representation of women or minorities in their workforces.

The Justice Department's other arguments revealed the depth of its hostility to affirmative action, and showed that

this hostility goes beyond reason. Because only one vacancy was being filled at the time of Diane Joyce's promotion to become the first female Road Dispatcher and the first female craft employee (out of 238 Craft workers), it attacked the plan as requiring a 100%-female quota for that one vacancy. The Justice Department ignored the skilled aspects of the Road Dispatcher job, ignored the fact that Diane Joyce had been required to work as a road crew member before becoming eligible to bid on a Road Dispatcher vacancy, pointed out that Road Dispatchers make records of what they do, and argued that the job was really clerical in nature. Because women were over-represented in clerical jobs, the Justice Department argued that there was no basis for the plan.

The Court stated:

> In determining whether an imbalance exists that would justify taking sex or race into account, a comparison of the percentage of minorities or women in the employer's work force with the percentage in the area labor market or general population is appropriate in analyzing jobs that require no special expertise, see Teamsters v. United States, 431 US 324, 52 L Ed 2d 396, 97 S Ct 1843 (1977) (comparison between percentage of blacks in employer's work force and in general population proper in determining extent of imbalance in truck driving positions), or training programs to provide expertise ... . Where a job requires special training, however, the comparison should be with those in the labor force who possess the relevant qualifications. ... The requirement that the "manifest imbalance" relate to a "traditionally segregated job category" provides assurance both that sex or race will be taken into account in a manner consistent with Title VII's purpose of eliminating the effects of employment discrimination, and that the interests of those employees not benefitting from the plan will not be unduly infringed.
>
> A manifest imbalance need not be such that it

> would support a prima facie case against the employer ... .

94 L.Ed.2d at 630-31. Where problem areas were found, there was to be a more refined analysis of the availability of qualified women and minorities for the kinds of positions in question.

The Court expressly approved the AAP's requirement that "annual short-term goals be formulated that would provide a more realistic indication of the degree to which sex should be taken into account in filling particular positions." The goals found proper were not to be construed as "quotas" that must be met, "but as reasonable aspirations in correcting the Agency's work force." 94 L.Ed.2d at 633.

The Court emphasized that a mechanical AAP could well be found unlawful. If the AAP did not take qualifications into account at all, and if it required that hiring be governed solely by the local general labor force statistics, this would be "mere blind hiring by the numbers", which would be unlawful. 94 L.Ed.2d at 633-34. The Court continued:

> The Agency's Plan emphatically did <u>not</u> authorize such blind hiring. It expressly directed that numerous factors be taken into account in making hiring decisions, including specifically the qualifications of female applicants for particular jobs. ...

94 L.Ed.2d at 634.

The last significant factor cited by the Court in upholding the AAP was that it "was intended to <u>attain</u> a balanced workforce, not to maintain one." 94 L.Ed.2d at 635 (emphasis in original). In light of the County's expectation that progress

would be slow, and in light of the difficulties facing the County, it was reasonable that the AAP had no ending date. 94 L.Ed.2d at 635-36. There may have to be an express assurance that a plan is temporary if it sets aside positions according to specific numbers. Id.

Thus, it is no longer open to reasonable argument that a properly modulated affirmative action program in hiring, training, and promotions is lawful under Title VII, whether the employer is private or governmental.

D. The Uses of Affirmative Action Plans in the Private Sector

One of the major uses of affirmative action plans in the private sector is to identify potential problem areas, and to correct them, before they result in substantial discrimination and thus in exposure of the private employer to substantial back pay awards. In the nature of things, it is difficult for a major corporation to know everything which is happening in the personnel operations at each of its often numerous facilities, scattered across the country. In the same manner, it is sometimes difficult for a Federal official to know what each unit of his or her agency is doing with respect to personnel operations.

When a corporation prepares an analysis of underutilization, it can pinpoint locations which are having problems, and can then target those locations for a closer look. It might be that there is a local personnel policy which tends to exclude women or minorities from consideration for hiring or promotions, but which serves no important function. It might be that a local

personnel manager is making employment decisions based on racial or sexual stereotypes. It might be that there is a perfectly good explanation for the underutilization, but that the employer can remedy the problem by making an extra, affirmative effort. It might even be that the nature of the problem is such that nothing can be done about the situation. Whatever the facts may be in a particular case, the employer is clearly better off for knowing about the problem and being in a position to take any necessary corrective steps.

A corporate employer will frequently prepare a set of goals and timetables covering each of its potential problem areas, where significant underutilization of women or minorities has been found. Setting an expected rate of progress, and making follow-up inquiries if that rate of progress is not achieved, is a management tool which works as well in the EEO area as it does in other areas of concern to companies: inventory control, cost reduction programs, productivity, etc.

Lawyers' Committee staff have often spoken to groups of corporate managers with interests in these areas, and such managers have often stressed to us the importance of continuing these affirmative action approaches, so that they can make sure that local facilities do not step over the line and begin to go back to the "old ways" of making employment decisions based on stereotypes and setting up unnecessary but racially or sexually exclusionary "qualifications". In part, these officials want to make sure that their companies are complying with the law; in

part, they want to make sure their companies do not build up substantial exposure to fair employment litigation. From either standpoint, analyses of underutilization of minorities and women, and the setting of reasonable goals and timetables where serious underutilization is found, are seen as indispensable management tools.

E. The Need for Affirmative Action Plans in Federal Agencies

Federal agencies, no less than private corporations, need to guard against the stereotyped decisionmaking, and unnecessary requirements, which tend to exclude minorities and women from consideration. Indeed, we would suggest that Federal agencies have a greater need for affirmative action plans, because most Federal personnel officials do not have the ingrained sense of accountability to outside agencies which many personnel officials outside the Federal government have had to develop, and which "nips in the bud" many potential problems before the employer faces substantial exposure to back pay liability.

There is no Office of Federal Contract Compliance Programs looking over the shoulders of Federal managers; no Justice Department suits are filed against Federal agencies because of EEO violations; the EEOC does not even investigate complaints of discrimination by Federal agency employers, let alone bring suit against the agencies. When complaints of discrimination are filed, the accused agency is responsible for investigating itself, attempting to conciliate with itself, and

even issuing its own decision in the case against it. The EEOC has only an appellate authority. The only outside review is through litigation brought by the victims of discrimination, after the problems have festered and liability has accumulated over a period of time.

Moreover, the track record of private enforcement litigation against the Federal government indicates that the law ---and the taxpayers---would be far better served by the kind of ongoing monitoring embodied in the use of affirmative-action underutilization analyses and reasonable goals and timetables where significant underutilization is found:

a) In Thompson v. Sawyer, 678 F.2d 257 (D.C.Cir., 1982), a sex discrimination case against the Government Printing Office in which the court found classwide violations of Title VII and of the Equal Pay Act, the government has to date paid out to victims an estimated $ 12 million, broken down as follows:

Title VII Back Pay	Approximately	$ 5,000,000
Equal Pay Act Back Pay:	"	$ 4,000,000
Back pay pension adjustments[15]	"	$ 1,000,000
Front pay (including third year, which either has been paid or is about to be paid)[16]	"	$ 1,500,000
Ongoing pension adjustments[17]	"	$ 300,000 to $ 600,000

When all the relief has been paid, it may well come out somewhere between $ 15 million and $ 20 million. If the GPO had had the kind of affirmative action plan used by major corporate employers and had been forced to pay attention to it,[18] we believe it could have

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[15] Back pay is not limited to paycheck wages, but also extends to compensation for loss of benefits arising because of the discrimination. Thus, an employee whose wages were artificially lowered because of discrimination will have a lowered pension entitlement because of the same discrimination, and the pension benefits must also be adjusted to make the employee whole.

[16] "Front pay" compensates a victim of discrimination who has to wait for another vacancy before he or she can be hired or promoted into the job originally denied him or her because of discrimination. Under Title VII, the courts do not allow "bumping" of incumbent employees to make room for the victims of discrimination.

In Thompson, front pay is being paid periodically by the government, at a rate of approximately $ 500,000 a year.

[17] Ongoing pension adjustments because of past discrimination are costing the government an estimated $ 100,000 to $ 200,000 a year.

[18] In Thompson, the agency chose to ignore findings by the Civil Service Commission that certain traditionally-female jobs were paid at too low a rate, in comparison with traditionally-

avoided such discrimination, and the taxpayers would have been spared this expense.

b) In Miller v. Staats (D.D.C.), a racial discrimination case against the General Accounting Office, the government agreed to a settlement in 1982, in which it paid $ 4.2 million in back pay and liquidated front pay. Again, a reasonable affirmative action plan would have revealed the problem long ago, and would have forced GAO to take corrective action.

c) In Fogle v. GAO (administrative class action), another racial discrimination case against the General Accounting Office, the class received $ 3.5 million in back pay and front pay, and GAO paid $ 1.3 million in attorneys' fees. Similarly, a reasonable AAP would have identified these problems and forced the taking of corrective actions.

d) In Chewning v. Edwards, C.A. No. 76-0334 (D.D.C.), a sex discrimination case against a former unit of the Department of Energy, the government conceded to the court that it had no defense to plaintiffs' motion for summary judgment on the issue of discrimination against the class of female professional employees. The government ultimately entered in 1982

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male jobs. A lawsuit was then required, to accomplish what should have been accomplished voluntarily. Had the agency taken timely action to remedy the problem, the plaintiffs might never have decided to bring suit.

into a consent decree providing for the payment of $ 2,220,000 in back pay. Once again, any reasonable affirmative-action plan would have revealed the extraordinary patterns of restriction of women on which the prosecution of the case was based, and timely action would have spared both the harm to the victims and the expense to the taxpayer.

e) In Withers v. Harris, C.A. No. S-77-3-CA (E.D.Tex.), a racial and sexual discrimination case against Region VI of the Department of Health and Human Services, the government agreed in 1980 to establish a back pay fund of $ 3,500,000 for blacks and women affected by discrimination. Our comments are the same with respect to the effect a reasonable affirmative action plan would have had.

f) In Howard v. McLucas, C.A. No. 75-168-MAC (M.D.Ga.), a racial discrimination case against Robbins AFB in Macon, the government agreed in 1984 to pay $ 3,750,000 in back pay to the victims of its discrimination. Again, a good AAP would have prevented both the harm to black employees and the exposure to the government.

g) In Chisholm v. U.S. Postal Service, 665 F.2d 482 (4th Cir., 1981), a case involving particularly blatant forms of classwide racial discrimination against black postal employees in the Charlotte, North

Carolina post office, the court of appeals affirmed the district court's findings of classwide discrimination, and the government subsequently agreed in 1983 to pay $ 1.7 million in back pay for some claims. Subsequent settlements of remaining claims have added some hundreds of thousands of dollars (estimated) to the total. Front pay will involve further substantial sums. It is precisely in these sorts of situations that underutilization analyses and a reasonable system of goals and timetables are most useful, in giving higher levels of management the information allowing them to spot the fact that a bigot is in charge of a facility, and to take corrective action.

Each of the above cases is fairly recent, involving the payment in the 1980's of sums of more than a million dollars in each case to victims of the government's racial and sexual discrimination. Nor is the list complete; it includes only cases which I personally knew to exist prior to the preparation of this testimony and does not include any additional cases which might be shown by a LEXIS search. It does not even include the costs of implementing injunctive relief, which in some cases is estimated to run into the millions, or tens of millions, of dollars. Nor does it include cases now in the pipeline, in which awards in excess of a million dollars will ultimately be made.

The harm done in these cases is only incompletely redressed by the monetary relief; back pay awards against the

Federal government do not even include prejudgment interest, which is a standard supplemental remedy in cases against all other employers.

F. The Need for Passage of H.R. 1330

The real tragedy in these cases is that all of the harm partially redressed by these awards was identifiable at an early stage, and could have been corrected at an early stage, if the agencies involved had just elected to follow the law and develop the same kinds of affirmative action plans and monitoring efforts which have become second nature to American business. The continuing opposition of many Federal officials to such a sensible step is difficult to understand.

We hope that the Justice Department will now withdraw its opposition to Federal-sector affirmative action plans, in light of the support given by the Supreme Court to reasonable affirmative action in each of the five affirmative action cases decided by the Court in the last two years: Wygant v. Jackson Board of Education, 476 U.S. ____, 90 L.Ed.2d 260 (1986);[19] Local 28 of the Sheet Metal Workers' Int'l Ass'n v. EEOC, 478 U.S. ____, 92 L.Ed.2d 344 (1986); Local 93, Int'l Ass'n of Firefighters v. City of Cleveland, 478 U.S. ____, 92 L.Ed.2d 405 (1986); United States v. Paradise, 480 U.S. ____, 94 L.Ed.2d 203 (1987); and Johnson v. Transportation Agency of Santa Clara County, 480

[19] Wygant struck down a plan providing for affirmative action in layoffs, because of the harsh effect on a few identifiable whites, but the opinions made clear that a majority of the Court were willing to uphold the more traditional forms of affirmative action in hiring and in promotions.

U.S. ____, 94 L.Ed.2d 615 (1987).

G. The Specific Provisions of H.R. 1330

We support the proposed Findings in § 2. Many agencies, including the Office of Personnel Management, do not require the racial identification of applicants, and consequently do not have accurate applicant-flow from which they can determine the presence or degree of adverse impact in various OPM selection requirements. In terms of underrepresentation, we have found that outside of large metropolitan areas the workforce of large private employers is sometimes far more representative of the population than is the workforce of Federal agencies. It demeans the law to have Federal agencies escape following the same rules they require private companies to follow.

We support the concepts set forth in § 3, but note that these provisions are tied to the definitions contained in § 8 of the bill, and that these definitions need to be tightened in order to pass muster under Title VII and the Constitution:

(a) The definitions of "underrepresentation" and "underutilization" in §§ 8(12) and 8(13) include any statistical imbalance, no matter how trivial, and whether or not the imbalance fails the "80% test" or the test of statistical significance. A substantial imbalance is required, as a condition for taking race- or gender-conscious affirmative action.

(b) The definition of "underutilization" in § 8(13) refers to a comparison between the composition

of the employees in a particular job category and the composition of the employees in the agency workforce as a whole. Unless this concept is limited to jobs which others in the agency workforce can reasonably fill, the comparison is not meaningful and will not justify race- or gender-conscious affirmative action. For example, the Public Health Service workforce includes many clerical and custodial employees who cannot reasonably be considered available for positions requiring medical qualifications. A finding that the PHS workforce is a certain percentage black cannot justify race-conscious goals in filling physician positions.

(c) Because the workforce of some agencies is not located uniformly across the country but may be concentrated in certain areas with local labor forces not reflective of the national labor force, national labor force data are not always going to be sufficiently closely related to agency employment as to justify race-conscious relief. For example, the Immigration and Naturalization Service employs Immigration Inspectors primarily at our borders and at ports of entry. There are many Hispanics in the local labor force on the border with Mexico, but few along the border with Canada. It may be that relatively few blacks live along these borders, compared with the nationwide data. There needs to be some provision ensuring that relevant

comparisons are being made.

In general, we believe that, even after the definitions are straightened out, there still must be substantial room for the exercise of judgment as to whether the resulting comparisons are meaningful, and thus whether race- or gender-conscious affirmative action is needed and the degree and duration of such action.

We recognize that some agencies have been "scofflaws" with respect to their AAP obligations in the past, but see no alternative to allowing reasonable scope for the operation of judgment. We suggest that the reasonableness of the resulting determinations in each instance be subject to close review by the EEOC, whether or not an affected individual complains of the determination, to ensure that the purposes of Title VII and of H.R. 1330 are being met.

If the EEOC finds that affirmative action is required and the agency refuses to abide by the decision, any member of an EEO group adversely affected by the refusal[20] should be empowered to file suit and obtain a writ of mandamus to force the agency to comply with the EEOC's decision, as long as that decision is consistent with the law.[21]

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[20] The degree of injury must be sufficient to ensure Article III standing. The benefit of working in a fully integrated workplace, and in a workplace free of discrimination, can suffice. Gray v. Greyhound Lines, East, 545 F.2d 169, 176 (D.C.Cir., 1976).

[21] When a charging party alleging discrimination by a Federal agency appeals the agency's finding of its own nondiscrimination to the EEOC and the EEOC finds that there was in fact discrimination and orders a remedy, the charging party can file suit in district court to obtain an injunction requiring the

If the EEOC finds that affirmative action is not required or fails to take action within a reasonable period of time, such as 60 days, any member of an EEO group who is adversely affected by the EEOC's decision should have the express right to further review under the Administrative Procedure Act.

Such a scheme would both preserve the necessary room for the exercise of reasonable discretion and ensure that mere ideological opposition to affirmative action will not frustrate the bill's purposes.

Turning to § 4(a) of the bill, we agree that the EEOC needs to have a means to obtain the necessary information from recalcitrant agencies which refuse to comply with the law, but need more time to perform legal research on the particular means suggested. We request an opportunity to supplement this statement in the near future.

We support the private right of action discussed in § 4(b) of the bill. It may well be essential if the commands of the bill are to be followed.

We do not have the information necessary to take a position on the minimum auditing requirements of § 5, the resources required to meet such requirements, and the results which would likely be achieved as compared with other means of

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agency to obey the EEOC's order. Moore v. Devine, 780 F.2d 1559 (11th Cir., 1986); Haskins v. U.S. Dept. of the Army, 808 F.2d 1192, 1199 (6th Cir., 1987); Pecker v. Heckler, 801 F.2d 709, 711 n. 3 (4th Cir., 1986); Houseton v. Nimmo, 670 F.2d 1375, 1378 (9th Cir., 1982). In the context under discussion, the Court would have to have the power to review the legality of the affirmative action, given the facts as found by the EEOC.

enforcing the law. Accordingly, we do not now take a position on this section.

We support the limitations of § 7 of the bill. They may well be required in order to meet the requirements of Title VII and of the Constitution.

H. Further Suggestions for Improvement

Private plaintiffs should be provided with incentives for enforcing the obligation to prepare adequate affirmative action plans comparable to those used by private industry, in the form of relief going beyond an award of back pay. For example, if the court were to find both a violation of an antidiscrimination law and that the violation could have been identified and corrected through preparation and review of a proper affirmative action plan, the Title VII remedy or Equal Pay Act remedy should be expanded to include prejudgment interest, a longer period of limitations, or a larger measure of monetary relief (compensatory damages, punitive damages, trebling of the back pay award, etc.). We urge this Subcommittee to include such amendments.

Conclusion

Difficult as it may be to understand the opposition of some of the officials in this Administration to the traditional means used by American business to identify problem areas and to resolve them, it is nonetheless necessary to recognize the existence of such opposition, and to take effective action to bring it to an end.

Almost fifteen years have passed since the 1972

amendments to Title VII went into effect, and it is high time that the government begin to follow the law. If Congress does not pass legislation providing an effective prod to the government, many Federal agencies will continue to drag their feet for another fifteen years. We urge that H.R. 1330 be amended, strengthened and passed.

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COMMITTEE ON EDUCATION AND LABOR

SUBCOMMITTEE ON EMPLOYMENT OPPORTUNITIES

TESTIMONY OF MARIO MORENO

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MEXICAN AMERICAN LEGAL DEFENSE AND EDUCATION FUND

FEBRUARY 9, 1988

WASHINGTON, D.C.

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STATEMENT
ON BEHALF OF THE
MEXICAN AMERICAN LEGAL DEFENSE
AND EDUCATIONAL FUND (MALDEF)

Mr. Chairman distinquished members of the Subcommittee:

My name is Mario Moreno. I am Associate Counsel in the Washington, D.C. office of the Mexican American Legal Defense and Educational Fund (MALDEF). MALDEF is a national civil rights organization dedicated to protecting and securing the civil and constitutional rights of Hispanics in the United States. MALDEF's national headquarters is in Los Angeles, and we have regional offices in San Francisco, San Antonio, Chicago and Washington, D.C. We appreciate the opportunity to express today our support for H.R. 3330, a bill which would for the first time require federal agencies to file with the Equal Employment Opportunity Commission (EEOC) plans and reports regarding their compliance with the mandates of Title VII.

A. MALDEF's Litigation Efforts Against Discrimination by Federal Agencies.

Over the course of its 20 year history, MALDEF has tirelessly worked to end the continuing exclusion of Hispanics from equal employment opportunities in the federal government. As entities carrying out the policies of the elected representatives of the American people, federal agencies can and should employ a workforce that is also representative of the American people. Sometimes our efforts have required us to turn

to the federal courts for assistance in eliminating discriminatory practices by federal agencies. Together with other civil rights groups, MALDEF successfully challenged the use of the PACE examination as a device used by federal agencies to screen out Hispanic and other minority applicants. Luevano v. Campbell, No. 79-0271 (D.D.C.). Similarly, in Yarbrough v. EEOC and Civil Service Commission, No. 74-C-437 (D. Colo.), MALDEF successfully challenged an examination used to employ secretaries and stenographers which adversely impacted Hispanic and other minority applicants.

B. Despite These Efforts, Hispanics Continue to Be Underrepresented in Federal Employment.

In addition to these litigation efforts, MALDEF has also sought to encourage voluntary efforts by the federal government to remedy the discriminatory practices of many agencies. In 1981 MALDEF, on behalf of eleven (11) other Hispanic organizations, filed a petition with President Reagan requesting a formal investigation into the underrepresentation of Hispanics in federal agencies.1 There has been little change in the findings set out in that petition:

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1 Petition to Request an Investigation Into the underrepresentation of Hispanics in Federal Agencies Before Ronald Reagan, the President of the United States (November 1981).

* While Hispanics comprised 4.8% of the national workforce in 1980,2 the Department of Justice was the only department, of the twelve (12) studied, which had an Hispanic workforce coming close to approximating the percentage of Hispanics in the national workforce. In all others, the percentage of Hispanic employees hovered around 2 percent.

* Hispanics employed by the Federal government are less likely than Hispanics in the private sector to hold higher level positions. Nationally, 2.3% of all Hispanic workers hold professional and technical jobs; yet only in the Department of Housing and Urban Development is the Hispanics participation in the high GS and executive level Federal positions at a comparable rate.

* Hispanic women suffer even greater discrimination than do Hispanics as a group, accounting for only 1.1% of the

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2 The extent of the underrepresentation of Hispanics has only increased in the intervening 6 years. While there has been little or no progress made in the employment of Hispanics by federal agencies, there has been a tremendous growth in the Hispanic population of the United States. In California, for example, it is projected that the Hispanic population will increase by 69.7% from 1980 to 2000; the increase for the population as a whole will be only 33.3%. Center for Continuing Study of the California Economy, Projections of Hispanic Populations for California (1982).

Federal workforce, with a vast majority concentrating at GS-8 and below.

* Hispanics have been disproportionately excluded from upward mobility programs.

* The federal government has erected arbitrary and discriminatory barriers, such as non-competitive reassignments, which prevent Hispanics from obtaining promotions to the higher GS levels.

* Hispanic communities have been deprived of needed services and revenue as a result of the federal government's failure to hire Hispanics at parity with the civilian labor force.

C. The Reporting Requirements Are A Reasonable Means of Eliminating Continuing Discrimination Against Hispanics by Federal Agencies

The continued underrepresentation of Hispanics cries out for measured responses that will effectively prod recalcitrant agencies on the road toward equal employment opportunity. Current regulations ostensibly require that federal agencies maintain a Minority Group Statistics System to provide statistical employment information by race or national origin. 29 C.F.R. §1613.301 et seq. Unfortunately, there is absolutely no requirement that the information collected be used in any

systematic way so as to remedy discrimination against a particular group.

This bill provides a means of putting this data to work. As Section 2 of H.R. 3330 points out, the bill requires of federal agencies the kinds of "equal employment opportunity analyses, reporting requirements, standards and level of effort expected of non-Federal employers." The activities required under H.R. 3330 have long been undertaken by the private sector under the requirements of Executive Order 11246. Surely requirements which the private sector has successfully carried out and which many private businessmen actively support cannot be considered "burdensome" to a federal agency.

The enforcement powers provided to the EEOC under Section 4 of the bill are an essential tool to ensure that equal employment opportunity is a priority of the highest order for all federal agencies. The refusal of the former National Endowment for the Humanities Director William Bennett to prepare an affirmative action plan, based on his personal beliefs, demonstrates that the status quo is an ineffective way to ameliorate the continuing discrimination against Hispanics in federal employment. Without a statute requiring that each federal agency prepare an affirmative action plan, agency heads who are not committed to equal employment opportunity are free to disregard the regulations with impunity.

It is also critical to point out what this bill does <u>not</u> require. Section 7 of the bill explicitly limits the use of the

plans and analyses collected under the bill so that federal agencies are not subjected to a requirement of hiring a specific "quota" of a particular EEO group. Instead, the bill complies with the Supreme Court's mandates regarding affirmative action and provides a carefully tailored means of addressing the continued underrepresentation of particular groups in the federal sector.

D. Conclusion

Despite many years of intensive effort by various federal agencies, private organizations such as MALDEF, and concerned citizens, federal agencies continue to exclude Hispanics and other minorities from their workforces. H.R. 3330 is a reasonable and measured response to this dilemma. We therefore respectfully urge the Subcommittee to support H.R. 3330 in its present form.

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TESTIMONY OF FEDERALLY EMPLOYED WOMEN

ON "THE FEDERAL EQUAL EMPLOYMENT OPPORTUNITY REPORT ACT"

BEFORE THE HOUSE EDUCATION AND LABOR SUBCOMMITTEE ON EMPLOYMENT OPPORTUNITIES

FEBRUARY 9, 1988

1968 - 1988
20 Years
of
Excellence

TESTIMONY ON "THE FEDERAL EQUAL EMPLOYMENT OPPORTUNITY REPORT ACT" BEFORE THE HOUSE EDUCATION AND LABOR SUBCOMMITTEE ON EMPLOYMENT OPPORTUNITIES, FEBRUARY 9, 1988.

CHAIRPERSON MARTINEZ, THANK YOU FOR INVITING FEDERALLY EMPLOYED WOMEN (FEW) TO TESTIFY BEFORE YOUR COMMITTEE TODAY. FEDERALLY EMPLOYED WOMEN IS AN INTERNATIONAL MEMBERSHIP ORGANIZATION REPRESENTING THE 900,000 WOMEN IN THE FEDERAL GOVERNMENT THROUGHOUT THE UNITED STATES AND FOREIGN NATIONS. FEW IS A PRIVATE, NON-PROFIT, NON-PARTISAN ORGANIZATION THAT WAS FOUNDEDED IN 1968 TO ADVOCATE EQUAL OPPORTUNITY AND FOSTER FULL POTENTIAL FOR WORKING WOMEN IN THE FEDERAL SECTOR.

AS AN ORGANIZATION COMMITTED TO EQUAL OPPORTUNITY FOR ALL IN FEDERAL EMPLOYMENT, FEW STRONGLY SUPPORTS THE IMPLEMENTATION AND ENFORCEMENT OF AFFIRMATIVE ACTION PLANS IN ORDER TO REDRESS THE PERSISTENT DISCRIMINATION WITHIN THE WORKPLACE. WITHOUT RESULTS-ORIENTED AFFIRMATIVE ACTION POLICIES, WOMEN AND MINORITIES WOULD FIND THEIR JOB AND PROMOTIONAL OPPORTUNITIES EXTREMELY LIMITED.

ORIGINS OF EEO IN THE FEDERAL SECTOR

BEFORE PROCEEDING TO PRESENT DAY EEO PRACTICES AND AFFIRMATIVE ACTION IMPLEMENTATION, IT IS USEFUL TO REVIEW THE EVOLUTION OF THE CURRENT LAWS AND REGULATIONS. WHEN THE CIVIL RIGHTS ACT WAS PASSED IN 1964, TITLE VII OF THE ACT CONTAINED A BROAD-BASED STATUE PROHIBITING DISCRIMINATION. THE CIVIL RIGHTS ACT BARRED DISCRIMINATION IN ALL PRACTICES ON THE BASIS OF SEX, RACE, COLOR, RELIGION, AND NATIONAL ORIGIN. IT ALSO CREATED THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION (EEOC) TO ADMINISTER AND ENFORCE THIS LAW. AFTER PASSAGE OF THE CIVIL RRIGHTS ACT, SEVERAL EXECUTIVE ORDERS (E.O.) WERE ISSUED THAT FURTHER STRENGTHENED ANTI-DISCRIMINATION LAWS. E.O. 11246, A PRODUCT OF THE JOHNSON ADMINISTRATION, SET EEO STANDARDS FOR ANY CONTRACTOR WHO DID BUSINESS WITH THE FEDERAL GOVERNMENT. E.O. 11375 GRANTED SEX EQUITY THE SAME STATUS AS OTHER FORMS OF DISCRIMINATION IN THE FEDERAL SERVICE. PASSAGE OF THIS STATUE IN 1967 HELPED FOSTER THE CREATION OF THE FEDERAL WOMEN'S PROGRAM AND WAS THE IMPETUS BEHIND THE FOUNDING OF FEDERALLY EMPLOYED WOMEN.

E.O. 11478, ISSUED BY THE NIXON ADMINISTRATION IN 1969, INTEGRATED ALL PARTS OF PERSONNEL MANAGEMENT -- HIRING, TRAINING, PROMOTIONS, ETC. -- WITH EQUAL OPPORTUNITY AND CLEARLY SPELLED OUT AFFIRMATIVE ACTION METHODS TO ACCOMPLISH THESE GOALS.

WITH THE PASSAGE OF THE EQUAL EMPLOYMENT OPPORTUNITY ACT OF 1972 (P.L. 92-261), FEDERAL SECTOR EMPLOYEES WERE AFFORDED TITLE VII PROTECTION AS WELL. THE U.S. CIVIL SERVICE COMMISSION WAS

MANDATED TO TAKE ACTION TO ACHIEVE MEASURABLE GAINS IN EMPLOYMENT FOR WOMEN AND MINORITIES. IN 1978, E.O. 12607 WAS ISSUED BY PRESIDENT CARTER. E.O. 12607 TRANSFERRED ALL EEO FUNCTIONS AND AFFIRMATIVE ACTION PROGRAMS UNDER THE AUTHORITY OF THE EEOC. IN ADDITION, THE GARCIA AMENDMENT TO THE CIVIL SERVICE REFORM ACT (5USC 7201) WAS PASSED WHICH REQUIRED ALL AGENCIES TO DEVELOP A FEDERAL EQUAL OPPORTUNITY RECRUITMENT PROGRAM (FEORP). THESE LAWS AND EXECUTIVE ORDERS FORM THE BASE FOR PRESENT DAY AFFIRMATIVE ACTION AND EEO GUIDELINES IN THE FEDERAL WORKPLACE. THE HEAD OF EACH FEDERAL EXECUTIVE DEPARTMENT AND AGENCY IS CHARGED BY THE CIVIL RIGHTS ACT OF 1964 AS AMENDED BY THE EQUAL EMPLOYMENT OPPORTUNITY ACT OF 1972 AND BY EXECUTIVE ORDER 11478 WITH ESTABLISHING AND MAINTAINING AN AFFIRMATIVE ACTION PROGRAM OF EQUAL OPPORTUNITY WITHIN EACH FEDERAL AGENCY. GUIDANCE, LEADERSHIP, AND ENFORCEMENT RESPONSIBILITIES FOR THE GOVERNMENTWIDE PROGRAM ARE ASSIGNED TO THE EEOC. THE LAW, THE EXECUTIVE ORDER, AND IMPLEMENTING REGULATIONS AND INSTRUCTIONS CALL FOR THE APPLICATION OF THIS NON-DISCRIMINATION POLICY AS AN INTEGRAL PART OF PERSONNEL POLICY AND PRACTICE IN EMPLOYMENT, DEVELOPMENT, ADVANCEMENT, AND TREATMENT OF CIVILIAN EMPLOYEES OF THE FEDERAL GOVERNMENT. THE OFFICE OF PERSONNEL MANAGEMENT (OPM) IS CHARGED WITH PROVIDING GUIDANCE TO AGENCIES ON CAREER ADVANCEMENT PROGRAMS. ALSO, EEOC AND OPM, AS REQUIRED BY EXECUTIVE ORDER 12607, WILL CONSULT ON APPROPRIATE STANDARDS FOR A CONTINUING REVIEW AND EVALUATION OF AGENCY EQUAL EMPLOYMENT OPPORTUNITY ACTIVITIES.

AFFIRMATIVE ACTION - DEFINED

ALTHOUGH A MYRIAD OF LAWS AND REGULATIONS GOVERN ANTI-DISCRIMINATION AND AFFIRMATIVE ACTION PRACTICES IN THE FEDERAL SERVICE, THESE LAWS AND REGULATIONS WOULD BE USELESS WITHOUT STRICT ENFORCEMENT. SINCE ITS INCEPTION, AFFIRMATIVE ACTION HAS BEEN QUESTIONED, CRITICIZED, AND IGNORED. MUCH OF THIS CONTROVERSY STEMS FROM A LACK OF UNDERSTANDING OF EXACTLY WHAT AFFIRMATIVE ACTION IS INTENDED TO ACCOMPLISH. AFFIRMATIVE ACTION IS NOT INTENDED TO COMPEL EMPLOYERS TO HIRE UNQUALIFIED PERSONS, NOR IS IT A REQUIREMENT IMPOSED ON EMPLOYERS REGARDLESS OF THEIR PAST HISTORY. IT IS SIMPLY A REMEDY TO REDRESS THE CONTINUING EFFECTS OF PAST DISCRIMINATION. AFFIRMATIVE ACTION IS ANY RACE OR SEX CONSCIOUS MEASURE BEYOND PASSIVE RESTRAINT OF DISCRIMINATORY ACTIONS, WHICH IS SUPPOSED TO CORRECT OR COMPENSATE FOR PAST AND PRESENT DISCRIMINATION.

GOALS AND TIMETABLES EVOLVED WHEN IT BECOME OBVIOUS THAT THE BEST INTENTIONS BY THE PUBLIC AND PRIVATE SECTOR YIELDED LITTLE, IF ANY POSITIVE RESULTS. GOALS AND TIMETABLES WERE DESIGNED TO PUT RESULTS-ORIENTED TOOLS INTO THE PROGRAM. FUTHERMORE, THE USE OF NUMERICAL FORMULAE FORCED EMPLOYERS TO KEEP A CURRENT DATA BASE ON THE EMPLOYMENT OF WOMEN AND MINORITIES IN VARIOUS

OCCUPATIONS ACROSS GRADE AND SALARY LEVELS. SUCH STATISTICAL ANALYSES ARE NEEDED TO PLOT PROGRESS AND PLAN NEW PROGRAMS, AS WELL AS PROVIDE CRITICAL INFORMATION WHEN LEGAL ACTION IS INITIATED.

THE STATUS OF WOMEN AND MINORITIES IN THE FEDERAL GOVERNMENT

IN NOVEMBER 1987, FEDERALLY EMPLOYED WOMEN RELEASED A REPORT ENTITLED, "THE ADVANCEMENT OF WOMEN IN THE FEDERAL GOVERNMENT: A PROGRESS REPORT." (SEE APPENDIX I). THE REPORT IS A STUDY ON THE GAINS WOMEN HAVE MADE WHO ARE EMPLOYED BY THE FEDERAL GOVERNMENT OVER THE PAST DECADE. AS WITH THE EMPLOYMENT TREND OF ALL WOMEN, FEDERALLY EMPLOYED WOMEN HAVE ENTERED THE LABOR FORCE IN LARGE NUMBERS IN RECENT YEARS. FROM 1977 TO 1987, FEDERAL WOMEN INCREASED THEIR LABOR FORCE PARTICIPATION FROM 34 PERCENT OF THE FULL TIME FEDERAL LABOR FORCE TO 40 PERCENT OF THE FULL TIME FEDERAL LABOR FORCE. WOMEN'S PARTICIPATION IN EACH CLASSIFICATION SYSTEM HAS ALSO INCREASED. IN 1977, WOMEN COMPRISED 43 PERCENT OF ALL GENERAL SCHEDULE EMPLOYEES AND 7.8 PERCENT OF ALL WAGE GRADE EMPLOYEES. IN 1986, WOMEN WERE 48 PERCENT OF ALL GENERAL SCHEDULE EMPLOYEES AND 9 PERCENT OF ALL WAGE GRADE EMPLOYEES. ALTHOUGH PROGRESS FOR WOMEN AND MINORITIES IS EVIDENT IN THE PAST TEN YEARS (AND SOME OF THIS PROGRESS IS A DIRECT RESULT OF AFFIRMATIVE ACTION PROGRAMS), THE EXISTENCE OF AN INTEGRATED WORKFORCE HAS NOT BEEN REALIZED. WOMEN AND MINORITIES ARE STILL CLUSTERED AT THE LOWEST END OF THE GENERAL SCHEDULE GRADES -- DOMINATING THE LOWEST PAYING JOBS IN THE FEDERAL SECTOR. FEDERALLY EMPLOYED WOMEN ARE OVERREPRESENTED IN THE CLERICAL OCCUPATIONS AND UNDERREPRESENTED IN THE PROFESSIONAL AND ADMINISTRATIVE OCCUPATIONS. IN 1986, WOMEN WERE ONLY 27 PERCENT OF ALL PROFESSIONAL EMPLOYEES. THE PERCENTAGE OF WOMEN IN THE TRADITIONALLY LOW PAID CLERICAL OCCUPATIONAL GROUP HAS DECREASED FROM 1977, BUT 41 PERCENT OF ALL WOMEN EMPLOYED BY THE FEDERAL GOVERNMENT REMAIN IN THAT JOB CATEGORY.

THE COMPOUNDED FACTORS OF SEX AND RACE SEGREGATE MINORITY WOMEN INTO EVEN MORE DISPROPORTIONATE OCCUPATIONAL GROUPS THAN WHITE WOMEN. IN 1977, MINORITY WOMEN COMPRISED 8.7 PERCENT OF THE TOTAL FEDERAL WORKFORCE; BY 1984, MINORITY WOMEN'S PARTICIPATION HAD INCREASED TO 14 PERCENT. CORRESPONDING STATISTICS FOR MINORITY WOMEN'S PARTICIPATION IN THE BROAD OCCUPATIONAL GROUPINGS (1984) ARE AS FOLLOWS: 5.8 PERCENT OF ALL PROFESSIONAL EMPLOYEES, 8.7 PERCENT OF ALL ADMINISTRATIVE EMPLOYEES, 1.5 PERCENT OF ALL TECHNICAL EMPLOYEES, AND 27.1 PERCENT OF ALL CLERICAL EMPLOYEES.

TIME HAS DONE LITTLE TO CORRECT THIS OCCUPATIONAL SEGREGATION. ALTHOUGH IT IS TRUE THAT WOMEN HAVE ENTERED MANY NON-TRADITIONAL OCCUPATIONS IN THE FEDERAL GOVERNMENT DURING THE PAST TEN YEARS, IT IS ALSO TRUE THAT WOMEN HAVE CONTINUED TO

ENTER THE TRADITIONAL FEMALE OCCUPATIONS. WOMEN HAVE INCREASED THEIR PARTICIPATION IN SUCH PROFESSIONAL CATEGORIES AS ENGINEERING ANND LAW WITH DRAMATIC INCREASES IN THE PERSONNEL FIELD, YET WOMEN ARE STILL ENTERING AND REMAINING IN THE TRADITIONAL WOMEN'S OCCUPATIONS OF SECRETARY AND NURSE. WHETHER THIS PHENONOMEN IS DUE TO CHOICE OR ARTIFICAL EMPLOYMENT BARRIERS IS UNKNOWN. EVIDENCE OF SEX DISCRIMINATION IN FEDERAL EMPLOYMENT AS WELL AS THE RECENT EROSION OF AFFIRMATIVE ACTION LAWS SUGGESTS THAT WOMEN ARE FUNNELED INTO TRADITIONAL FEMALE JOB CATEGORIES WITH FEW PROMOTIONAL OPPORTUNITIES. WHAT IS KNOWN IS THAT THOSE OCCUPATIONS WHERE WOMEN PREDOMINATE ARE LOWER GRADE/LOWER WAGE THAN THOSE JOBS WHERE MEN PREDOMINATE. IN FACT, IT HAS BEEN SHOWN THAT THE MORE WOMEN IN AN OCCUPATION, THE LOWER THE WAGE RATE.

THE ABSENCE OF WOMEN IS MOST NOTED IN THE HIGHER GRADE SENIOR EXECUTIVE SERVICE. WOMEN COMPRISE ONLY 7 PERCENT OF ALL SENIOR EXECUTIVES AND GRADES 16-18 POSITIONS, AN INCREASE FROM 3.4 PERCENT IN 1977. SIMILARLY, WOMEN COMPRISED LESS THAN 1 PERCENT OF ALL THE 13-14 WAGE GRADE JOBS.

IT IS EVIDENT THAT THE DEEP ROOTED PERSERVERANCE OF SEX AND RACE DISCRIMINATION AND RESULTING OCCUPATIONAL SEGREGATION AND WAGE DISCRIMINATION IS STILL PREVALENT IN THE FEDERAL GOVERNMENT. ADDITIONAL REMEDIES AS WELL AS STRICT ENFORCEMENT OF EXISTING REMEDIES ARE NEEDED TO INCREASE PROMOTIONAL OPPORTUNITIES FOR WOMEN AND MINORITIES INTO THE HIGHER GRADES.

CURRENT SITUATION OF AFFIRMATIVE ACTION IN THE FEDERAL SECTOR

THE CURRENT EROSION OF CIVIL RIGHTS LAWS IN OUR COUNTRY IS PROCEEDING AT AN ALARMING RATE. THE DEPARTMENT OF JUSTICE, THE U.S. COMMISSION ON CIVIL RIGHTS, AND THE EEOC HAVE PUBLICALLY STATED THEIR OPPOSITION TO RESULTS-ORIENTED MEASURES TO ERASE SEX DISCRIMINATION IN THE FEDERAL LABOR FORCE. THE VERY AGENCIES CHARGED WITH ENSURING EQUAL OPPORTUNITIES FOR ALL HAVE DENDIED THEIR MANDATE.

THE SUPREME COURT HAS HANDED DOWN DECISIONS BOTH AFFIRMING AND DENOUNCING AFFIRMATIVE ACTION. ON JUNE 12, 1983, THE SUPREME COURT HANDED DOWN A DECISION THAT HINDERED AFFIRMATIVE ACTION LAWS IN FIREFIGHTERS LOCAL UNION 1784 V. STOFFS. THE COURT RULED THAT EMPLOYER LAYOFFS MUST BE IN ACCORDANCE WITH SENIORITY EVEN IF INCREASES IN MINORITY AND FEMALE EMPLOYMENT FROM COURT ORDERED AFFIRMATIVE ACTION ARE WIPED OUT IN THE PROCESS. JUSTICE BYRON WHITE, IN HIS WRITTEN DECISION, DISMISSED EXTENSIVE LEGISLATIVE HISTORY FROM THE 1972 EXPANSION OF TITLE VII AND CAST DOUBT ON FEATURE ORIENTED QUOTAS IN HIRING OR PROMOTION. ON MARCH 25, 1987, HOWEVER, THE SUPREME COURT ENDORSED AFFIRMATIVE ACTION PROGRAMS IN JOHNSON V. TRANSPORTATION AGENCY OF SANTA CLARA

COUNTY BY RULING THAT EMPLOYERS MAY PROMOTE WOMEN AND MINORITIIES AHEAD OF WHITE MALES - WITHOUT EVIDENCE OF PRIOR DISCRIMINATION. JUSTICE WILLIAM BRENNAN JR. WROTE THE MAJORITY DECISION WHICH STATED, " TITLE VII OF THE 1964 CIVIL RIGHTS ACT GIVES EMPLOYERS WIDE DISCRETION TO TAKE RACE OR GENDER INTO ACCOUNT AS A "PLUS" IN DECISIONS TO HIRE AND PROMOTE WOMEN AND MINORITIES. SUCH VOLUNTARY AFFIRMATIVE ACTION PROGRAMS ARE APPROPRIATE TO CORRECT A CONSPICUOUS IMBALANCE IN TRADITIONALLY SEGREGATED JOB CATEGORIES."

DECREASED FUNDING LEVELS FOR EQUAL EMPLOYMENT PROGRAMS AS WELL AS APPOINTMENTS TO PERSONS TO HIGH LEVEL AGENCY POSITIONS WHO ARE NOT COMMITTED TO THE ERADICATION OF SEX DISCRIMINATION HAS SIGNIFICANTLY WEAKENED MANDATES PROHIBITING SEX DISCRIMINATION IN FEDERAL EMPLOYMENT IN RECENT YEARS. SPECIFIC PROBLEM AREAS INCLUDE:

0 LACK OF IMPLEMENTATION AND ENFORCEMENT OF AFFIRMATIVE ACTION PROGRAMS

THE ENFORCEMENT OF AFFIRMATIVE ACTION LAWS IS DIRECTLY DEPENDENT UPON THE COMMITMENT OF AN INDIVIDUAL MANAGER. IN WORKPLACES, WHERE EQUAL EMPLOYMENT OPPORTUNITY IS NON-EXISTANT, THERE IS NO EVIDENCE OF RECRIMINATION.

0 PROPOSAL TO MERGE EEO AND PERSONNEL FUNCTIONS

CURRENT ADMINISTRATION PROPOSALS INCLUDE MERGING EEO AND PERSONAL FUNCTIONS IN THE FEDERAL WORKPLACE. THIS ACTION WOULD DE-EMPHASIZE EEO PROGRAMS WHICH HAVE TRADITIONALLY BEEN UNDER THE SUPERVISION OF THE SECRETARY OF THE AGENCY. SEVERAL AGENCIES HAVE ALREADY, HOWEVER, DOWNGRADED THIS FUNCTION TO OTHER LEVELS. THIS ACTION NOT ONLY ERODES THE ROLE OF EEO IN AN AGENCY, BUT PLACES BURDENS ON EEO SPECIALISTS WHO MUST ALSO ACT IN A PERSONNEL CAPACITY. IN RELATED INCIDENTS, FEDERAL WOMEN PROGRAM MANAGERS WHO OVERSEE EEO AND AFFIRMATIVE ACTION FUNCTIONS FOR WOMEN ARE OFTEN ASSIGNED THEIR FEDERAL WOMEN´S PROGRAM RESPONSIBILITIES AS A COLLATERAL. THIS SITUATION MEANS THAT THESE MANAGERS ARE PERFORMING ANOTHER JOB IN ADDITION TO THEIR EEO RESPONSIBILITIES.

0 CIRCUMVENTING AFFIRMATIVE ACTION RULES

THERE ARE MANY CASES WHERE MANAGERS AND SUPERVISORS DELIBERATELY ASSIGN A MALE EMPLOYEE TO AN OFFICE WHERE A VACANCY IS ANTICIPATED. AS SOON AS THE VACANCY IS REALIZED, THE MAN IS OFFERED THE HIGHER GRADE POSITION. THIS PRACTICE OF "LINING UP WHITE MALES" FOR TOP MANAGEMENT POSITIONS IS FAIRLY COMMON IN THE FEDERAL GOVERNMENT AND NEGATES MUCH OF THE PROGRESS THAT AFFIRMATIVE ACTION COULD ACHIEVE IF THE POSITION WERE OPEN TO COMPETITION AND THE NEED FOR MORE WOMEN AND MINORITIES IN HIGHER

GRADES EMPHASIZED. CASES WHERE BLATANT PROHIBITION BASED ON SEX STILL EXIST IS EVIDENT BY THE RECENT SITUATION OF FEW MEMBER PAM DOVIAK. AS A TECHNICAL ENGINEER FOR A NAVY SHIPYARD, SHE WAS DENIED THE OPPORTUNITY TO PARTICIPATE IN SEA TRIALS TO TEST HER WORK DURING THE ACTUAL OPERATION OF A SUBMARINE - DESPITE THE FACT THAT SHE HAD BEEN PLACED IN THAT JOB BY THE NAVY THROUGH AN UPPERWARD MOBILITY PROGRAM. PARTICIPATION IN SEA TRIALS IS NECESSARY FOR MS DOVIAK TO BECOME ELIGIBLE FOR A JOB PROMOTION. ALTHOUGH THE EEOC RULED IN HER FAVOR TWICE, THE NAVY REFUSED TO COMPLY WITH THIS DECISION ON THE BASIS THAT THIS SITUATION WAS A MILITARY MATTER AND NOT UNDER THE DIRECTIVES OF TITLE VII. RECENTLY THE NAVY DID GRANT PERMISSION FOR MS DOVIAK AND SEVERAL OTHER WOMEN TO PARTICPATE IN SEA TRIALS AT THE "COMMANDER'S DISCRETION."

0 DISILLUSIONMENT WITH THE PROCESS

DISILLUSIONMENT WITH EQUAL EMPLOYMENT OPPORTUNITYY LAWS AND AFFIRMATIVE ACTION IN THE FEDERAL SECTOR IS RAMPANT. AGENCY HEADS ARE NOT HELD ACCOUNTABLE FOR THEIR LACK OF ACTION IN FOSTERING EQUAL EMPLOYMENT OPPORTUNITY IN THE WORKPLACE. ALTHOUGH SOME PROGRESS HAS BEEN MADE IN THE HIRING OF WOMEN AND MINORITIES, THE JOB OF PROMOTING WOMEN AND MINORITIES WITHIN THE FEDERAL GOVERNMENT HAS JUST BEGUN.

IN SEPTEMBER 1987, THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION ISSUED A DIRECTIVE TO FEDERAL AGENCY HEADS INSTRUCTING THEM TO MAKE A STRONG COMMITMENT TO IDENTIFYING AND REMOVING BARRIERS AT ALL LEVELS OF THE WORKFORCE THAT DETER AFFIRMATIVE ACTION. SPECIFICALLY EEOC CALLED FOR THE ACHIEVEMENT OF EQUAL EMPLOYMENT OPPORTUNITY FOR ALL FEDERAL EMPLOYEES, NOT ONLY WHEN HIRED; BUT ALSO AS THEY ADVANCE WITHIN THE WORKFORCE THROUGH A SYSTEMATIC MULTIFACED METHOLOGY. THE EEOC DIRECTIVE MANDATES A STRONG COMMITMENT BY HEADS OF AGENCIES; MANAGEMENT ACCOUNTABILITY BY SENIOR MANAGERS RESPONSIBLE FOR ACHIEVING AGENCY EEO OBJECTIVES; IDENTIFICATION AND REMOVAL OF BARRIERS AT ALL LEVELS OF THE WORKFORCE; USE OF PROGRAM ELEMENTS TO ANALYZE PROGRAM NEEDS AND A REPORTING MECHANISM TO MONITOR PROGRESS IN RESOLVING PROBLEMS; ANNUAL REPORTS SUBMITTED IN A TIMELY MANNER ON PROGRAM ACCOMPLISHMENTS IN ADDITION TO STATISTICAL REPORTS ON THE AGENCIES' WORKFORCE PROFILES; AND NUMERICAL GOAL SETTING WHERE THERE IS A MANIFEST IMBALANCE OR CONSPICUOUS ABSENCE OF MINORITIES AND WOMEN IN THE AGENCY'S WORKFORCE.

THE EEOC DIRECTICE OUTLINES A FOCUSED AFFIRMATIVE ACTION APPROACH BY REQUIRING AGENCIES WITH 500 OR MORE EMPLOYEES AND INSTALLATIONS WITH 2,000 OR MORE EMPLOYEES TO SUBMIT A MULTI YEAR PLAN TO EEOC WHICH INCLUDES: A POLICY STATEMENT AFFIRMING SUPPORT OF AN AFFIRMATIVE ACTION PROGRAM; A PROGRAM ANALYSIS (INCLUDING ORGANIZATION AND RESOURCES, WORKFORCE ANALYSIS, DISCRIMINATION COMPLAINTS, RECRUITMENT AND HIRING, EMPLOYEE

DEVELOPMENT PROGRAMS, PROMOTIONS, SEPARATIONS, PROGRAM EVALUATION); PROBLEM AND BARRIER IDENTIFICATION; REPORT OF OBJECTIVES AND ACTION ITEMS; NUMERICAL GOALS; PLAN FOR PREVENTION OF SEXUAL HARASSMENT; DELEGATION OF AUTHORITY; ORGANIZATIONAL CHART; CERTIFICATION OF QUALIFICATIONS OF PRINCIPAL OFFICERS; AND A STATEMENT OF MONITORING AND EVALUATION SYSTEMS. ANNUAL SUBMISSIONS BY AGENCIES TO THE EEOC ARE TO INCLUDE: STATISTICAL ANALYSIS; ACCOMPLISHMENT REPORTS; AND UPDATES.

IT IS HOPED THAT THIS STRATEGY -- A STEP BY STEP PROCEDURE OF IDENTIFYING PROBLEMS, PROPOSING SOLUTIONS TO PROBLEMS, AND FIXING PROBLEMS -- WILL PROVIDE EEO PERSONNEL WITH AN ACTION BASED APPROACH TO AFFIRMATIVE ACTION. FEW BELIEVES THAT THE BARRIERS TO PROMOTIONS FOR WOMEN AND MINORITIES MUST BE CLEARLY DEFINED IN ORDER TO ENCOURAGE WOMEN AND MINORITIES TO MOVE UP THE FEDERAL CAREER LADDERS, HOWEVER, THIS ACTION MUST BE ACCOMPANIED BY STRONG AND EFFECTIVE AFFIRMATIVE ACTION HIRING AND TRAINING INITIATIVES. FEW COMMENDS THE EEOC FOR THIS RENEWED COMMITMENT TO AFFIRMATIVE ACTION AND PROMOTING WOMEN AND MINORITY GROUPS, BUT URGES THE IMPLEMENTATION OF STRONG ENFORCEMENT MECHANISMS IN ORDER TO REALIZE THE ADVANCEMENT OF WOMEN AND MINORITIES.

RECOMMENDATIONS

FEW RECOMMENDS THAT THE FEDERAL GOVERNMENT INCREASE ITS CONCENTRATION ON RACE AND SEX CONSCIOUS TOOLS TO ACHIEVE A WELL-INTEGRATED WORKFORCE AND CONTINUE TO USE STATISTICAL MEASURES OF COMPLIANCE WITH NON-DISCRIMINATION SUCH AS GOALS AND TIMETABLES. WE ALSO RECOMMEND THAT THE FULL RANGE OF REMEDIES AND SANCTIONS BE AVAILABLE INCLUDING BACK PAY AND DEBARMENT AS AN INCENTIVE TO COMPLIANCE. WE WOULD LIKE TO SEE THE REESTABLISHMENT OF STRONG ENFORCEMENT OF AFFIRMATIVE ACTION PROGRAMS WITHIN THE FEDERAL AGENCIES AS WELL AS RETAIN PLANS FOR AGENCIES AND FEDERAL CONTRACTORS TO UTILIZE GOALS AND TIMETABLES IN AFFIRMATIVE ACTION PLANS.

UNDERLYING AN EFFECTIVE AFFIRMATIVE ACTION PROGRAM IS A STRONG METHOD OF ENFORCEMENT AND COMPLAINCE WITH THE LAWS AND REGULATIONS. IN PAST YEARS, ALTHOUGH AGENCIES HAVE BEEN REQUIRED TO SUBMIT ANNUAL REPORTS ON AFFIRMATIVE ACTION PLANS, MANY AGENCIES DO NOT COMPLY WITH THESE REQUIRMENTS. LITTLE RECRIMINATION IS EVIDENT FOR THIS NON-COMPLIANCE. AFTER THE REPORTS ARE SENT TO EEOC, A METHOD OF MONITORING THE PROGRESS OF AFFIRMATIVE ACTION IN FEDERAL AGENCIES IS NEEDED. LITTLE PROGRESS IS GAINED IF NO ACTION FOLLOWS DETAILED PROPOSALS.

AFFIRMATIVE ACTION PROGRAMS MUST INCLUDE A RANGE OF TARGETED STEPS IN THE WORKFORCE. WELL INTEGRATED HIRING PRACTICES HAVE LITTLE EFFECT IF NO EMPHASIS IS PLACED ON PROMOTION OPPORTUNITIES.

PROMOTIONS ARE NON-EXISTENT WITHOUT THE AVAILABILITY OF PROPER TRAINING PROGRAMS. FEW IS ESPECIALLY CONCERNED ABOUT THE TRAINING ASPECT IN AFFIRMATIVE ACTION PLANS AS TRAINING FEDERALLY EMPLOYED WOMEN IS ONE OF THE PRIME OBJECTIVES OF THE ORGANIZATION.

THE GATHERING OF STATISTICS ON WORKFORCE PLACEMENT OF WOMEN AND MINORITIES MUST BE KEEP CURRENT. IN RECENT YEARS, THE DETAIL OF THE STATISTICS ON WOMEN AND MINORITIES IN THE FEDERAL WORKFORCE AS WELL AS THE FREQENCY OF THESE REPORTS HAS DECLINED. IT IS NECESARY TO PINPOINT THE "TROUBLE SPOTS" WITH THE AID OF STATISTICAL ANALYSIS.

FEW COMMENDS THE AUTHORS OF H.R. 3330 AND THE EEOC DIRECTIVE FOR INCLUDING SEXUAL HARASSMENT PLANS AS A FORM OF DISCRIMINATION. MANY PEOPLE IN GOVERNMENT HAVE CONCLUDED THAT SEXUAL HARASSMENT IS NO LONGER A PROBLEM IN THE FEDERAL WORKFORCE AND HAVE CONSIDERED ELIMINATING THE SEXUAL HARASSMENT PREVENTION PROGRAMS. FEW CAN STATE WITH ABSOLUTE CERTAINTY THAT SEXUAL HARASSMENT IS STILL A PREVALENT PROBLEM IN THE FEDERAL WORKFORCE AS WE ARE SURE THE MERIT SYSTEMS PROTECTION BOARD'S STUDY WILL CONFIRM WHEN IT IS RELEASED IN THE SPRING OF 1988.

IN DESIGNING AFFIRMATIVE ACTION PLANS, IT IS NECESSARY TO TAKE INTO CONSIDERATION THE PERSISTENT TREND OF OCCUPATIONAL SEGREGATION. THE SEPARATION OF MEN AND WOMEN IN DIFFERENT JOB CATETORIES IS A PRIMARY FACTOR IN THE WAGE DIFFERENTIAL BETWEEN THE SEXES.

FEW IS CONCERNED ABOUT THE "EXEMPTED AGENCIES" UNDER THE EEOC DIRECTIVE. SMALL AGENCIES WITH 500 OR FEWER EMPLOYEES ARE NOT REQUIRED TO DEVELOP PLANS OR TO SUBMIT AN ANNUAL AFFIRMATIVE ACTION REPORT TO THE EEOC. SMALLER AGENCIES ONLY HAVE TO SUBMIT A STATEMENT SIGNED BY THE AGENCY HEAD AFFIRMING THE AGENCY'S COMMITMENT TO EQUAL EMPLOYMENT OPPORTUNITY. INSTALLATIONS WITH FEWER THAN 2000 EMPLOYEES ALSO DO NOT HAVE TO DETAIL AFFIRMATIVE ACTION PLANS. MANY ACTIVITIES DO NOT HAVE 500 EMPLOYEES AND MANY COMMANDS HAVE LESS THAN 2000 EMPLOYEES, YET THESE WORKPLACES DO NOT HAVE TO COMPLY WITH AFFIRMATIVE ACTION REGULATIONS. WOMEN AND MINORITIES WHO WORK FOR THESE ACTIVITIES ARE, THEREFORE, WITHOUT THE PROTECTION OF ANTI-DISCRIMINATION LAWS IN THE FEDERAL GOVERNMENT.

AS STATED IN THE BEGINNING OF THIS SECTION, ENFORCEMENT IS THE KEY TO AN EFFECTIVE AFFIRMATIVE PROGRAM. EEOC SHOULD BE GIVEN WIDE AUTHORITY TO REQUIRE AGENCIES TO SUBMIT THEIR REPORTS IN A TIMELY FASHION AS WELL AS ENSURE THAT THEY CARRY OUT THEIR AFFIRMATIVE ACTION PROGRAMS.

H.R. 3330 ADDRESSES MANY OF THE CONCERNS AND INCORPORATES MANY OF THE RECOMMENDATIONS FEW HAS DISCUSSED IN THIS TESTIMONY.

WE BELIEVE THE PROPOSED LEGISLATION WILL PROMOTE EFFECTIVE AFFIRMATIVE ACTION IN THE FEDERAL GOVERNMENT.

BENEFITS OF AFFIRMATIVE ACTION

WELL IMPLEMENTED AND EFFECTIVE AFFIRMATIVE ACTION PLANS AFFORD MANY BENEFITS. IN ADDITION TO THE OBVIOUS INCREASE IN THE NUMBER OF WOMEN AND MINORITIES IN THE FEDERAL SERVICE, THE CONSCIENCE OF THE FEDERAL GOVERNMENT AS AN EQUAL OPPORTUNITY EMPLOYER IS RAISED. AFFIRMATIVE ACTION UTILIZES THE TALENTS OF MANY INDIVIDUALS WHO WOULD OTHERWISE BE STIFLED BY BIAS. OPENING AND INCREASING CAREER OPPORTUNITIES EXPANDS THE PURCHASING POWER OF WOMEN AND MINORITIES, AND REDUCES THE BURDEN ON TAXPAYERS TO SUPPORT THOSE UNABLE TO SUPPORT THEMSELVES. IN ADDITION, AFFIRMATIVE ACTION PROMOTES FAIR AND RATIONALE EMPLOYMENT POLICIES AND BETTER DECISION-MAKING THROUGH THE PRESENCE OF DIVERSE VIEWPOINTS AT ALL LEVELS OF THE WORKPLACE.

CONCLUSION

AFFIRMATIVE ACTION IS A NECESSARY TOOL FOR WOMEN AND MINORITIES TO REACH THEIR FULL POTENTIAL IN THE PUBLIC SECTOR AS WELL AS THE PRIVATE SECTOR OF EMPLOYMENT. A SOCIETY WHICH AFFORDS FAIR TREATMENT TO WOMEN AND MINORITIES IS A STRONGER SOCIETY BY FAR, THAN ONE WHICH EXCLUDES THEM FROM FULL PARTICIPATION. FEW COMMENDS YOU, REPRESENTATIVE MARTINEZ, FOR INTRODUCING H.R. 3330 AND WE PLEGE OUR AID IN HELPING YOU PASS THIS VITAL LEGISLATION. THANK YOU FOR ASKING FEW TO TESTIFY BEFORE THE COMMITTEE TODAY. I WOULD BE HAPPY TO ANSWER ANY QUESTIONS.

APPENDIX I

THE ADVANCEMENT OF WOMEN IN THE FEDERAL GOVERNMENT

A PROGRESS REPORT

In Celebration of the 10th Anniversary of the National Women's Conference held in Houston, Texas, November 1977

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TEN YEARS AGO, 20,000 WOMEN, MEN, AND CHILDREN MET IN HOUSTON, TEXAS FOR THE NATIONAL WOMEN'S CONFERENCE. AUTHORIZED AND FINANCED BY THE U.S. CONGRESS AND THE PRESIDENT OF THE UNITED STATES, THE PURPOSE OF THE CONFERENCE WAS TO ASSESS THE ROLE OF WOMEN AND IDENTIFY BARRIERS THAT PREVENT WOMEN FROM FULLY PARTICIPATING IN SOCIETY. THE VOTING DELEGATES APPROVED A 25 PLANK NATIONAL PLAN OF ACTION ADDRESSING CONCERNS SUCH AS EMPLOYMENT, CHILD CARE, WELFARE REFORM, SEXUAL PREFERANCE, EDUCATION, AND OLDER WOMEN. THROUGH THE CONTINUING WORK OF MANY INDIVIDUALS AND ORGANIZATIONS DEDICATED TO ADVANCING THE RIGHTS OF WOMEN, THE ISSUES PRESENTED IN THE NATIONAL PLAN OF ACTION HAVE BEEN DISCUSSED, DEBATED, EXPANDED, AND MODIFIED. SOME OF THE GOALS PUT FORTH BY THE NATIONAL PLAN OF ACTION HAVE BEEN REALIZED. MOST HAVE NOT. AS WE MARK THE 10TH ANNIVERSARY OF THAT HISTORIC MEETING IN HOUSTON, IT IS TIME TO RECOMMIT OURSELVES TO THE ULTIMATE GOAL OF PROVIDING FULL SOCIAL, POLITICAL, AND ECONOMIC EQUALITY TO ALL WOMEN IN THE WORLD.

THIS PUBLICATION IS INTENDED AS A PROGRESS REPORT ON THE GAINS WOMEN HAVE MADE WHO ARE EMPLOYED BY THE FEDERAL GOVERNMENT. FEDERALLY EMPLOYED WOMEN ARE UNIQUE IN THAT THEY WORK FROM WITHIN THE INSTITUTION RESPONSIBLE FOR ENFORCING AND PROMOTING LAWS THAT PROHIBIT SEX DISCRIMINATION AS WELL AS FROM WITHOUT. AS EMPLOYEES OF THE FEDERAL GOVERNMENT, WOMEN HAVE PURSUED ADEQUATE CHILD CARE FACILITIES, UPWARD MOBILITY PROGRAMS, FUNDING FOR AGENCIES CHARGED WITH ENSURING NON-DISCRIMINATION, FLEXIBLE WORK SCHEDULES, AND FAIR WAGES. ALTHOUGH THE BATTLES ARE STILL BEING CARRIED ON, PROGRESS HAS BEEN EVIDENT IN THE PAST DECADE. WOMEN ARE SLOWLY MOVING INTO UPPER MANAGEMENT LEVEL JOBS AND ENTERING ONCE ALL MALE OCCUPATIONAL DOMAINS. IT IS THIS AUTHOR'S INTENTION TO DOCUMENT THIS PROGRESS AS RELATED TO THE NATIONAL PLAN OF ACTION. AS AN ORGANIZATION, FEDERALLY EMPLOYED WOMEN (FEW) HAS BEEN INSTRUMENTAL IN ADVANCING THE RIGHTS OF WOMEN EMPLOYED BY THE FEDERAL GOVERNMENT. ALTHOUGH THE ORGANIZATION ADDRESSES MANY ISSUES, THE MAIN FOCUS OF ITS LEGISLATIVE AGENDA IS WORKFORCE CONCERNS FACED BY WOMEN. FOR THIS REASON, THIS PUBLICATION WILL BE LIMITED TO THOSE NATIONAL PLAN OF ACTION PLANKS THAT DIRECTLY IMPACT WOMEN IN FEDERAL EMPLOYMENT.

FEDERALLY EMPLOYED WOMEN - A STATISTICAL PORTRAIT

AS WITH THE EMPLOYMENT TREND OF ALL WOMEN, FEDERALLY EMPLOYED WOMEN HAVE ENTERED THE LABOR FORCE IN LARGE NUMBERS DURING THE RECENT DECADES. THIS TREND REMAINED CONSISTENT DURING THE PAST 10 YEARS WHEN FEDERAL WOMEN INCREASED THEIR LABOR FORCE PARTICIPATION FROM 34 PERCENT OF THE FULL TIME FEDERAL LABOR FORCE IN 1977 TO 40 PERCENT IN 1986. WOMEN'S PARTICIPATION IN EACH CLASSIFICATION SYSTEM HAS ALSO INCREASED. IN 1977, WOMEN COMPRISED 43 PERCENT OF THE GENERAL SCHEDULE EMPLOYEES AND 7.8 PERCENT OF ALL WAGE GRADE EMPLOYEES. IN 1986, WOMEN WERE 48 PERCENT OF THE GENERAL SCHEDULE EMPLOYEES AND 9 PERCENT OF ALL WAGE GRADE EMPLOYEES.

OCCUPATIONAL DATA

IN THE FEDERAL GOVERNMENT, WOMEN'S EMPLOYMENT PATTERNS ARE SIMILAR TO THOSE WOMEN WHO WORK IN THE PRIVATE SECTOR IN THAT MEN AND WOMEN HAVE TRADITIONALLY HELD DIFFERENT JOBS. FEDERALLY EMPLOYED WOMEN ARE OVERREPRESENTED IN THE CLERICAL OCCUPATIONS AND UNDERREPRESENTED IN THE PROFESSIONAL AND ADMINISTRATIVE OCCUPATIONS (AS ILLUSTRATED IN FIGURE I). ALTHOUGH WOMEN'S PARTICIPATION IN THE PROFESSIONAL AND ADMINISTRATIVE OCCUPATIONS HAS INCREASED DURING THE PAST DECADE, THE PERSISTENT PATTERN OF MALES AND FEMALES IN SEPARATE OCCUPATIONS CONTINUES. IN 1986, WOMEN WERE ONLY 27 PERCENT OF ALL PROFESSIONAL EMPLOYEES. THE PERCENTAGE OF WOMEN IN THE TRADITIONALLY LOW PAID CLERICAL OCCUPATONAL GROUP HAS DECREASED FROM 1977, BUT 41 PERCENT OF ALL WOMEN EMPLOYED BY THE FEDERAL GOVERNMENT REMAIN IN THAT JOB CATEGORY (SEE FIGURE II).

THE COMPOUNDED FACTORS OF SEX AND RACE SEGREGATE MINORITY WOMEN INTO EVEN MORE DISPROPORTIONATE OCCUPATIONAL GROUPINGS THAN WHITE WOMEN. IN 1977, MINORITY WOMEN COMPRISED 8.7 PERCENT OF THE TOTAL FEDERAL WORKFORCE; BY 1984, MINORITY WOMEN'S PARTICIPATION HAD INCREASED TO 14 PERCENT. CORRESPONDING FIGURES FOR MINORITY WOMEN'S PARTICIPATION IN THE BROAD OCCUPATIONAL GROUPINGS (1984) ARE AS FOLLOWS: 5.8 PERCENT OF ALL PROFESSIONAL EMPLOYEES, 8.7 PERCENT OF ALL ADMINISTRATIVE EMPLOYEES, 1.5 PERCENT OF ALL TECHNICAL EMPLOYEES, AND 27.1 PERCENT OF ALL CLERICAL EMPLOYEES.

TIME HAS DONE LITTLE TO CORRECT THIS OCCUPATIONAL SEGREGATION. ALTHOUGH IT IS TRUE THAT WOMEN HAVE ENTERED MANY NON-TRADITIONAL OCCUPATIONS IN THE FEDERAL GOVERNMENT DURING THE PAST TEN YEARS, IT IS ALSO TRUE THAT WOMEN HAVE CONTINUED TO ENTER THE TRADITIONAL FEMALE OCCUPATIONS. AS SHOWN IN TABLE I, WOMEN HAVE INCREASED THEIR PARTICIPATION IN SUCH PROFESSIONAL

FIGURE I. PERCENT OF WOMEN IN MAJOR OCCUPATIONAL GROUPS IN THE FEDERAL GOVERNMENT, 1977, 1986.

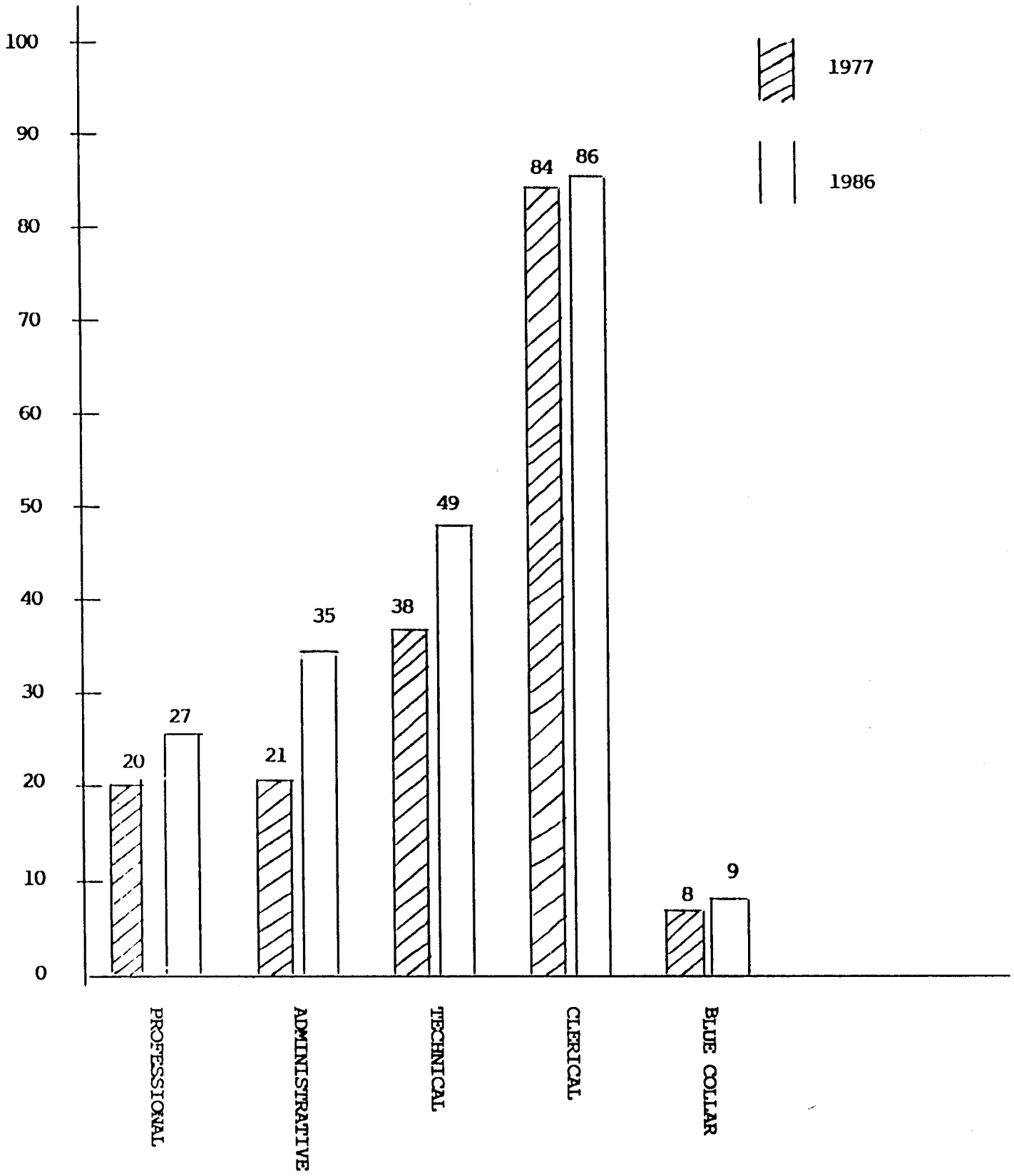
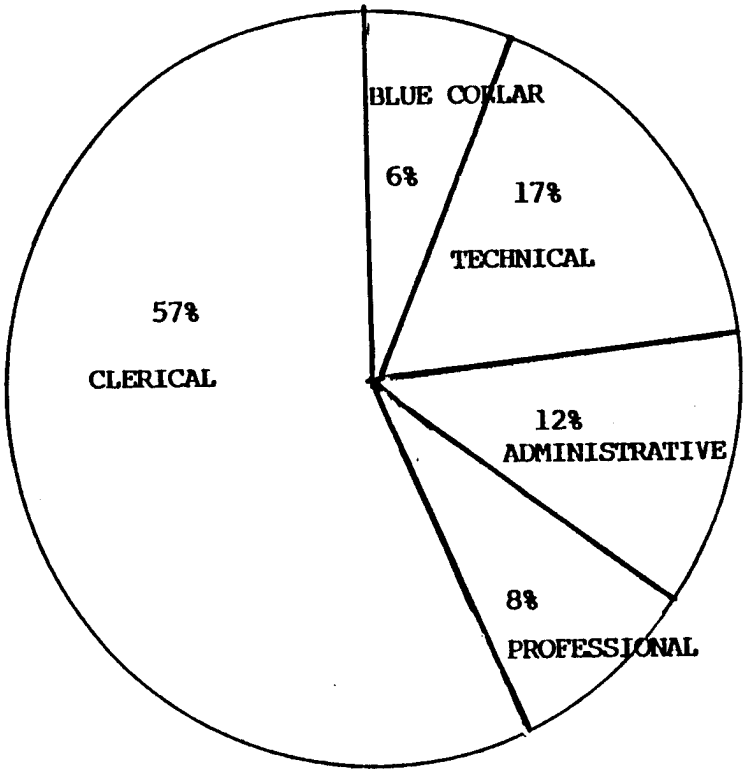
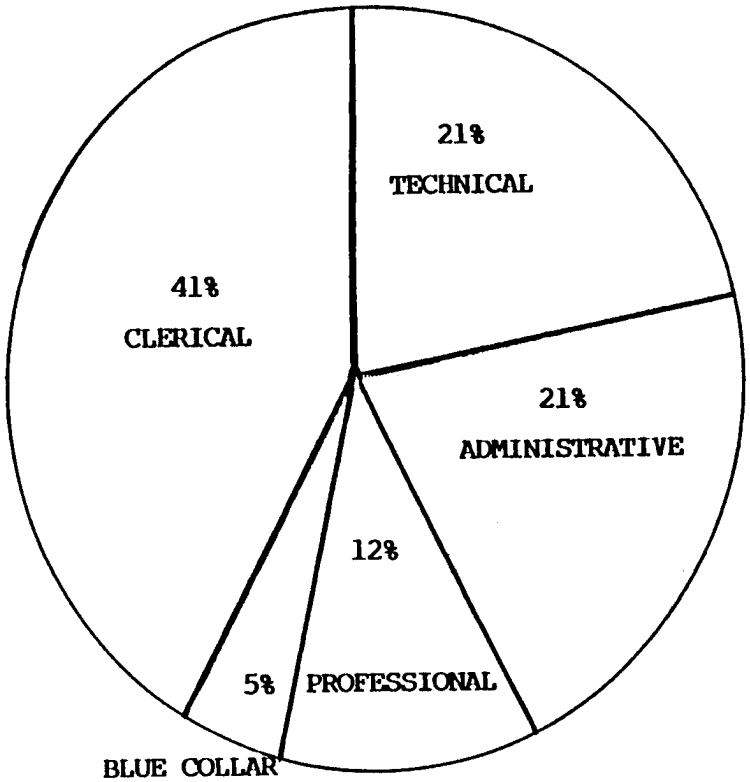


FIGURE II. DISTRIBUTION OF WOMEN WITHIN MAJOR OCCUPATIONS IN THE FEDERAL GOVERNMENT.

1977



1986



CATEGORIES AS ENGINEERING AND LAW WITH DRAMATIC INCREASES IN THE PERSONNEL FIELD, YET WOMEN ARE STILL ENTERING AND REMAINING IN THE TRADITIONAL WOMEN'S OCCUPATIONS OF SECRETARY AND NURSE. WHETHER THIS PHENONOMEN IS DUE TO CHOICE OR ARTIFICAL EMPLOYMENT BARRIERS IS UNKNOWN. EVIDENCE OF SEX DISCRIMINATION IN FEDERAL EMPLOYMENT AS WELL AS THE RECENT EROSION OF AFFIRMATIVE ACTION LAWS SUGGESTS THAT WOMEN ARE FUNNELED INTO TRADITIONAL FEMALE JOB CATEGORIES WITH FEW PROMOTIONAL OPPORTUNITIES. WHAT IS KNOWN IS THAT THOSE OCCUPATIONS WHERE WOMEN PREDOMINATE ARE LOWER GRADE/LOWER WAGE THAN THOSE JOBS WHERE MEN PREDOMINATE. IN FACT, IT HAS BEEN SHOWN THAT THE MORE WOMEN IN AN OCCUPATION, THE LOWER THE WAGE RATE.

TABLE I

PERCENTAGE OF WOMEN IN SELECTED OCCUPATIONS, 1977,1986

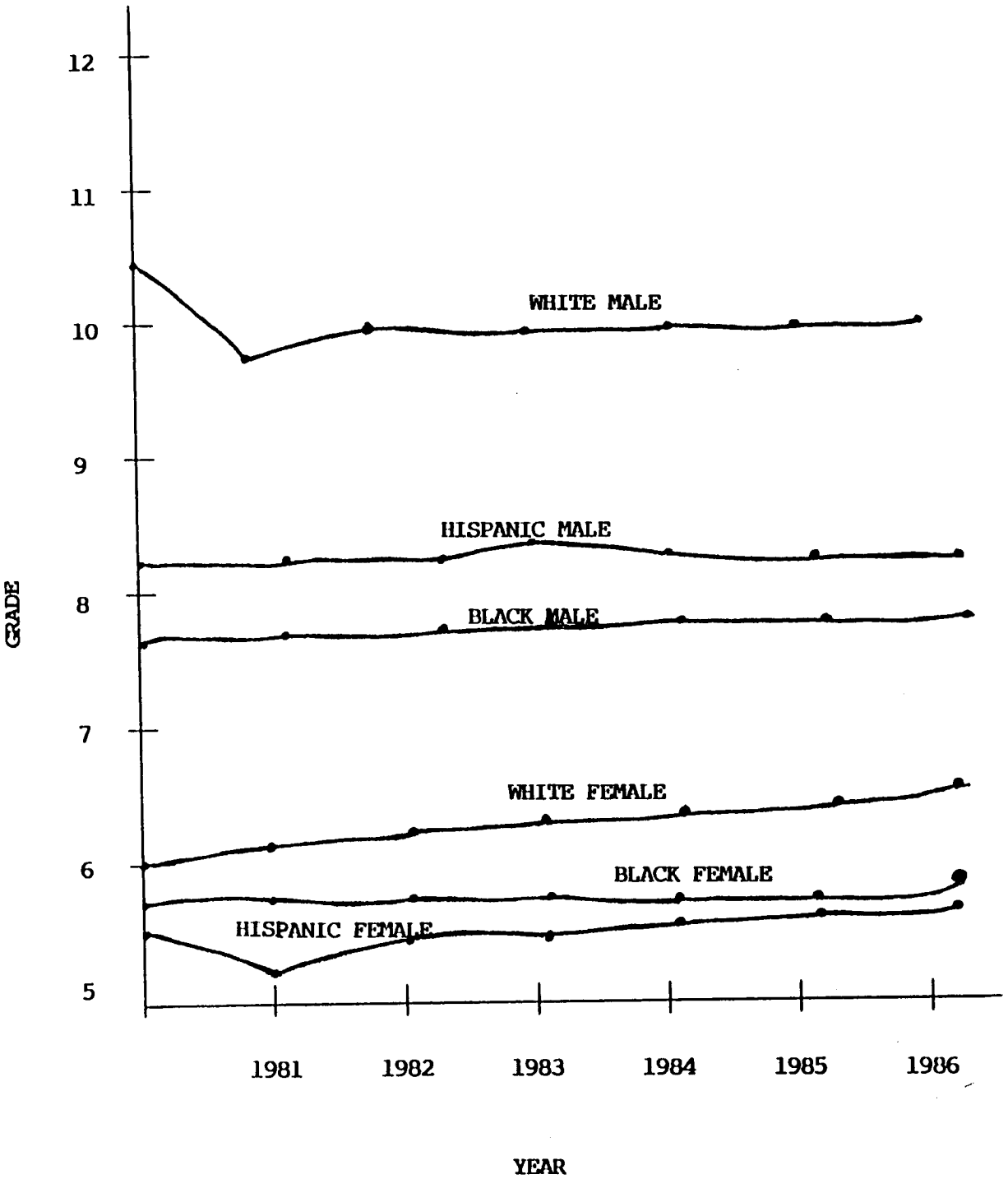
1977	OCCUPATION	1986
12.0%	MEDICAL OFFICER	18.0%
.8%	GENERAL ENGINEERING	2.8%
13.8%	ATTORNEY	27.0%
36.0%	PERSONNEL MANAGER	50.0%
58.0%	PERSONNEL STAFFING	70.0%
30.0%	CONTRACT PROCUREMENT	50.0%
99.0%	SECRETARY	99.0%
95.0%	CLERK TYPIST	93.0%
95.0%	TELEPHONE OPERATOR	90.0%
94.0%	NURSE	92.0%
74.0%	LIBRARIAN	74.0%

WAGE DATA

THE AVERAGE SALARY FOR WOMEN EMPLOYED BY THE FEDERAL GOVERNMENT IN 1986 WAS $21,190 PER YEAR AS COMPARED TO AN AVERAGE SALARY OF $30,590 FOR MEN. WOMEN EARNED AN AVERAGE SALARY OF $20,446 IN BLUE COLLAR OCCUPATIONS AS COMPARED TO $24,673 FOR THEIR MALE COUNTERPARTS. IN EACH OCCUPATIONAL CATEGORY MEN OUTEARN WOMEN WITH THE EXCEPTION OF THE CLERICAL OCCUPATION WHERE MEN'S AND WOMEN'S EARNINGS ARE APPROXIMATELY THE SAME. FOR EXAMPLE, ALTHOUGH WOMEN HAVE INCREASED THEIR PARTICIPATION IN THE PROFESSIONAL OCCUPATIONAL SERIES, A 62 PERCENT WAGE GAP EXISTS BETWEEN MALE AND FEMALE PROFESSIONAL EMPLOYEES. MINORITY WOMEN NOT ONLY EARN LESS THAN ALL MEN IN THE FEDERAL GOVERNMENT, BUT EXPERIENCE LOWER WAGES THAN WHITE WOMEN AS EVIDENT BY THE 58 PERCENT WAGE GAP BETWEEN WHITE MALES AND MINORITY WOMEN IN THE PROFESSIONAL JOB CATEGORY.

THE SLOW PROGRESS ALL WOMEN HAVE MADE INTO THE HIGHER GRADE

FIGURE III. AVERAGE GRADE BY SEX AND RACE, 1980 - 1986.



POSITIONS IN THE FEDERAL GOVERNMENT IS ILLUSTRATED IN FIGURE III WHERE WOMEN'S, MEN'S, AND MINORITY'S AVERAGE GRADES ARE SHOWN FROM 1981 TO 1986. ON THE AVERAGE, WOMEN OCCUPY LOWER GRADES THAN MEN AND MINORITY WOMEN AVERAGE LOWER GRADES THAN BOTH MEN AND WHITE WOMEN.

THE ABSENCE OF WOMEN IS MOST NOTED IN THE HIGHER GRADE SENIOR EXECUTIVE SERVICE AND POLITICAL APPOINTMENTS. WOMEN COMPRISE ONLY 7 PERCENT OF ALL SENIOR EXECUTIVE AND GRADES 16-18 POSITIONS, AN INCREASE FROM 3.4 PERCENT IN 1977. SIMILARLY, WOMEN COMPRISED LESS THAN 1 PERCENT OF ALL THE 13-14 WAGE GRADE JOBS. THE RATE OF WOMEN APPOINTED TO TOP GOVERNMENT POSITIONS HAS DECLINED IN THE PAST SEVERAL YEARS. TO DATE, ONE WOMEN HAS BEEN APPOINTED TO THE SUPREME COURT AS AN ASSOCIATE JUSTICE AND FEW WOMEN HAVE HELD CABINET POSITIONS. FROM JANUARY 1981 TO APRIL 1983, ONLY 24 OF THE 287 PRESIDENTIAL APPOINTEES WERE WOMEN. THE MOVEMENT OF WOMEN INTO THE HIGHER ESCHELONS OF GOVERNMENT SERVICE HAS BEEN PAINFULLY SLOW WITH FEW WOMEN EVER HOLDING TOP POLICY LEVEL POSITIONS IN THE UNITED STATES FEDERAL GOVERNMENT.

FEDERALLY EMPLOYED WOMEN - 20 YEARS OF EXCELLENCE

FEDERALLY EMPLOYED WOMEN (FEW) IS AN INTERNATIONAL MEMBERSHIP ORGANIZATION REPRESENTING WOMEN IN THE FEDERAL GOVERNMENT THROUGHOUT THE UNITED STATES AND FOREIGN NATIONS. FEW WAS FOUNDED IN 1968 TO: TAKE ACTION TO END SEX DISCRIMINATION IN EMPLOYMENT IN GOVERNMENT SERVICE; TO INCREASE JOB OPPORTUNITIES FOR WOMEN IN THE GOVERNMENT SERVICE AND TO FUTHER THE POTENTIAL OF ALL WOMEN IN THE GOVERNMENT; TO IMPROVE THE MERIT SYSTEM IN GOVERNMENT EMPLOYMENT; TO ASSIST GOVERNMENT EMPLOYEES AND APPLICANTS FOR GOVERNMENT EMPLOYMENT WHO ARE DISCRIMINATED AGAINST BECAUSE OF SEX; AND TO COOPERATE WITH AND ASSIST OTHER ORGANIZATIONS AND INDIVIDUALS CONCERNED WITH EQUAL EMPLOYMENT OPPORTUNITY IN THE GOVERNMENT WITHOUT DISCRIMINATION BECAUSE OF SEX, RACE, COLOR, AGE, MARITAL STATUS, NATIONAL ORIGIN, POLITICAL AFFILIATION, RELIGION, OR PHYSICAL HANDICAP.

FROM THE BEGINNING, FEW WAS ENVISIONED AS A THREE-TIER STRUCTURE. . . THE ORGANIZATION ITSELF, INDIVIDUAL CHAPTERS, AND FINALLY, REGIONS. THE FIRST YEAR'S EFFORTS WERE DEVOTED TO THE ESTABLISHMENT AND STRENGTHENING OF THE ORGANIZATION. ONE MAJOR CONCERN WAS THAT FEW NOT BECOME AN ORGANIZATION JUST FOR PROFESSIONAL WOMEN, BUT THAT IT SHOULD BE A "GRASSROOTS" ORGANIZATION, CONCERNED WITH ALL WOMEN. CHAPTERS WERE FIRST ORGANIZED IN 1969. THE FIRST FEW CHAPTER, CENTRAL CINCINNATI, WAS CHARTERED IN JANUARY 1970. THIS WAS FOLLOWED CLOSELY BY FORT MONMOUTH, NEW JERSEY; NORTH ALABAMA; AND CHICAGO. FEW IS NOW A WORLDWIDE ORGANIZATION WITH MORE THAN 200 CHAPTERS IN 46 STATES AND 5 FOREIGN COUNTRIES.

THE REGIONAL CONCEPT CAME INTO BEING IN 1974. FEW REGIONS ARE CONSISTENT WITH THE OFFICE OF PERSONNEL MANAGEMENT REGIONS, GEOGRAPHICALLY; HOWEVER, FEW ADDED ONE MORE, THE D.C. METROPOLITAN REGION. EACH REGION HAS AN ELECTED REGIONAL MANAGER WHOSE RESPONSIBILITY IS TO COORDINATE CHAPTER ACTIVITIES IN THE REGION AND WITH NATIONAL.

TO MEET THE GOALS OF THE ORGANIZATION, FEW CONCENTRATES ITS EFFORTS ON 2 MAJOR PROGRAMS - TRAINING AND LEGISLATION. A NATIONAL TRAINING PROGRAM IS CONDUCTED ANNUALLY DURING THE MONTH OF JULY. ATTENDANCE IS OPEN TO ALL FEDERAL, STATE, CITY, AND PUBLIC EMPLOYEES. FOREMOST AMONG THE TRAINING OBJECTIVES IS INCREASING EMPLOYEE'S KNOWLEDGE OF THE FEDERAL SYSTEMS, RULES, AND REGULATIONS UNDER WHICH THEY WORK; SECONDLY, IS HELPING ATTENDEES ACQUIRE KNOWLEDGE OF CAREER DEVELOPMENT AND PLANNING TECHNIQUES; AND THIRD IS ENHANCING PERSONAL EFFECTIVENESS, AND AWARENESS OF BROADER ISSUES THAT IMPACT WOMEN. TRAINING PROGRAMS ARE ALSO OFFERED AT THE REGIONAL AND CHAPTER LEVELS.

FEW HAS DEVOTED MUCH TIME DURING RECENT YEARS, IMPACTING

LEGISLATION ON SUCH ISSUES AS PAY EQUITY, CIVIL RIGHTS, CHILD CARE, PARENTAL LEAVE, WOMEN IN THE MILITARY, CONTRACTING OUT, THE EQUAL RIGHTS AMENDMENT, RETIREMENT, AND FEDERAL BUDGET ISSUES. WHILE FEW WORKS PRIMARILY ON WORKFORCE ISSUES THAT AFFECT WOMEN EMPLOYED BY THE FEDERAL GOVERNMENT, FEW IS CONCERNED WITH THE PASSAGE OF LEGISLATION TO BENEFIT ALL WOMEN.

IN APRIL 1988, FEDERALLY EMPLOYED WOMEN WILL CELEBRATE ITS 20TH ANNIVERSARY OF THE FOUNDING OF THE ORGANIZATION. AS THIS BECOMES A TIME FOR REFLECTION OF ACHIEVEMENTS AS WELL AS REVISION OF GOALS, IT IS APPARENT THAT THERE IS STILL MUCH WORK TO BE DONE TO ENSURE EQUITY FOR ALL WOMEN EMPLOYED BY THE FEDERAL GOVERNMENT.

NATIONAL PLAN OF ACTION PROGRESS REPORT FEDERALLY EMPLOYED WOMEN

THIS SECTION WILL ADDRESS SOME OF THE PLANKS OF THE NATIONAL PLAN OF ACTION AS PREPARED BY THE CONFERENCE PARTICIPANTS IN HOUSTON, TEXAS IN 1977. ONLY THOSE PLANKS THAT DIRECTLY IMPACT FEDERAL WOMEN'S LABOR FORCE CONCERNS WILL BE DICUSSED AT THIS TIME - SPECIFICALLY THE EMPLOYMENT ACTICN PLANK. THE ORIGINAL 1977 GOALS WILL BE REVIEWED AS WELL AS PROGRESS MADE IN THE PAST DECADE AND RECOMMENDATIONS FOR FUTURE ACTICN.

NATIONAL PLAN OF ACTION - EMPLOYMENT PLANK

IN 1977, THE HOUSTON DELEGATES PROPOSED MANY GOALS FOR WOMEN IN THE PAID LABOR FORCE INCLUDING: FULL EMPLOYMENT OF WCMEN; VIGOROUS AND EXPEDITIOUS ENFORCEMENT OF ALL STATUES PROHIBITING DISCRIMINATION IN EMPLOYMENT; EQUAL PAY FOR WORK OF EQUAL VALUE; EXTENDING DISCRIMINATION PROHIBITIONS TO THE LEGISLATIVE BRANCH; NON-DISCRIMINATION IN UNIONS; AMENDING THE VETERANS' PREFERENCE ACT; PROHIBITING DISCRIMINATION BASED ON PREGNANCY; AND GATHERING STATISTICS ON WCMEN IN THE WORKFORCE. THE CONFERENCE REPORT DIRECTED THE FEDERAL GOVERNMENT, "AS THE LARGEST SINGLE EMPLOYER OF WCMEN, THE FEDERAL GOVERNMENT SHOULD BE A MODEL, SETTING HIGH STANDARDS FOR PRIVATE EMPLOYERS TO MATCH. IT HAS DECLARED ITSELF IN FAVOR OF EQUAL OPPCRTUNITY AND MERIT PROMOTICN FOR ITS OWN EMPLOYEES FCR A CENTURY, YET AFFIRMATIVE ACTION GUIDELINES OF THE U.S. CIVIL SERVICE ARE WEAKER THAN THOSE IMPOSED, AT LEAST IN THEORY, ON FEDERAL CONTRACTORS. CIVIL SERVICE GUIDELINES DO NOT FOR INSTANCE, REQUIRE FEDERAL AGENCIES TO ASSESS DISPARITIES IN THEIR EMPLOYMENT PROFILE, OR TO DEVELOP ANNUAL GOALS FOR ELIMINATING THEM."

ENFORCEMENT OF STATUES PROHIBITING DISCRIMINATION IN FEDERAL EMPLOYMENT

PRIOR TC DISCUSSING PRESENT DAY EQUAL EMPLOYMENT OPPORTUNITY (EEO) PRACTICES AND AFFIRMATIVE ACTION IMPLEMENTATION IN THE FEDERAL GOVERNMENT, IT IS NECESSARY TO REVIEW THE EVOLUTION OF THE CURRENT LAWS AND REGULATIONS. WHEN THE CIVIL RIGHTS ACT WAS PASSED IN 1964, TITLE VII OF THE ACT CONTAINED A BROAD-BASED STATUE PROHIBITING DISCRIMINATION. THE CIVIL RIGHTS ACT BARRED DISCRIMINATION IN ALL PRACTICES ON THE BASIS OF SEX, RACE, COLOR, RELIGION, AND NATIONAL ORIGIN. IT ALSO CREATED THE EQUAL EMPLCYMENT OPPCRTUNITY COMMISSION (EEOC) TO ADMINISTER AND ENFORCE THIS LAW. AFTER PASSAGE OF THE CIVIL RIGHTS ACT, SEVERAL EXECUTIVE ORDERS (E.O.) WERE ISSUED THAT FURTHER STRENGTHENED ANTI-DISCRIMINATION LAWS. E.O. 11246, A PRODUCT OF THE JOHNSON ADMINISTRATION, SET EEO STANDARDS FOR ANY CONTRACTOR WHO DID

BUSINESS WITH THE FEDERAL GOVERNMENT. E.O. 11375 GRANTED SEX EQUITY THE SAME STATUS AS OTHER FORMS OF DISCRIMINATION IN THE FEDERAL SERVICE. PASSAGE OF THIS STATUE IN 1967 HELPED FOSTER THE CREATION OF THE FEDERAL WOMEN'S PROGRAM AND WAS THE IMPETUS BEHIND THE FOUNDING OF FEDERALLY EMPLOYED WOMEN (FEW).

E.O. 11478, ISSUED BY THE NIXON ADMINISTRATION IN 1969, INTEGRATED ALL PARTS OF PERSONNEL MANAGEMENT -- HIRING, TRAINING, PROMOTIONS, ETC. -- WITH EQUAL OPPORTUNITY AND CLEARLY SPELLED CUT AFFIRMTIVE ACTION METHODS TO ACCOMPLISH THESE GOALS. WITH THE PASSAGE OF THE EQUAL EMPLOYMENT OPPORTUNITY ACT OF 1972 (P.L. 92-261), FEDERAL SECTOR EMPLOYEES WERE AFFORDED TITLE VII PROTECTION AS WELL. THE U.S. CIVIL SERVICE COMMISSION WAS MANDATED TO TAKE ACTION TO ACHIEVE MEASURABLE GAINS IN EMPLOYING WOMEN AND MINORITIES. IN 1978, E.O. 12067 WAS ISSUED BY PRESIDENT CARTER. E.O. 12607 TRANSFERRED ALL EEO FUNCTIONS AND AFFIRMATIVE ACTION PROGRAMS UNDER THE AUTHORITY OF EEOC. IN ADDITION, THE GARCIA AMENDMENT TO THE CIVIL SERVICE REFORM ACT (5USC 7201) WAS PASSED WHICH REQUIRED ALL AGENCIES TO DEVELOP A FEDERAL EQUAL OPPORTUNITY RECRUITMENT PROGRAM (FEORP). THESE LAWS AND EXECUTIVE ORDERS FORM THE BASE FOR PRESENT DAY AFFIRMATIVE ACTION AND EEO GUIDELINES IN THE FEDERAL WORKFORCE.

ALTHOUGH A MYRIAD OF LAWS AND REGULATIONS GOVERN ANTI-DISCRIMINATION AND AFFIRMATIVE ACTION PRACTICES IN THE FEDERAL SERVICE, THESE LAWS AND REGULATIONS WOULD BE USELESS WITHOUT STRICT ENFORCEMENT. SINCE ITS INCEPTION, AFFIRMATIVE ACTION HAS BEEN QUESTIONED, CRITICIZED, AND IGNORED. MUCH OF THIS CONTROVERSY STEMS FROM A LACK OF UNDERSTANDING OF EXACTLY WHAT AFFIRMATIVE ACTION INTENDED TO ACCOMPLISH. AFFIRMATIVE ACTION IS NOT INTENDED TO COMPEL EMPLOYERS TO HIRE UNQUALIFIED PERSONS, NOR IS IT A REQUIREMENT IMPOSED ON EMPLOYERS REGARDLESS OF THEIR PAST HISTORY. IT IS SIMPLY A REMEDY TO REDRESS THE CONTINUING EFFECTS OF PAST DISCRIMINATION. AFFIRMATIVE ACTION IS ANY RACE OR SEX CONSCIOUS MEASURE BEYOND PASSIVE RESTRAINT OF DISCRIMINATORY ACTIONS, WHICH IS SUPPOSED TO CORRECT OR COMPENSATE FOR PAST AND PRESENT DISCRIMINATION.

GOALS AND TIMETABLES EVOLVED WHEN IT BECAME OBVIOUS THAT THE BEST INTENTIONS BY THE PUBLIC AND PRIVATE SECTOR YIELDED LITTLE, IF ANY POSITIVE RESULTS. GOALS AND TIMETABLES WERE DESIGNED TO PUT RESULTS-ORIENTED TOOLS INTO THE PROGRAM. FUTHERMORE, THE USE OF NUMERICAL FORMULAE FORCED EMPLOYERS TO KEEP A CURRENT DATA BASE ON THE EMPLOYMENT OF WOMEN AND MINORITIES IN VARIOUS OCCUPATIONS ACROSS GRADE AND SALARY LEVELS. SUCH STATISTICAL ANALYSES ARE NEEDED TO PLOT PROGRESS AND PLAN NEW INITIATIVES, AS WELL AS PROVIDE CRITICAL INFORMATION WHEN LEGAL ACTION IS INITIATED.

ALTHOUGH PROGRESS FOR WOMEN AND MINORITIES IN THE FEDERAL

GOVERNMENT IS EVIDENT IN THE PAST DECADE (AND SOME OF THIS PROGRESS IS A DIRECT RESULT OF AFFIRMATIVE ACTION PROGRAMS), THE EXISTENCE OF AN INTEGRATED WORKFORCE HAS NOT BEEN REALIZED. WOMEN AND MINORITIES ARE STILL CLUSTERED AT THE LOWEST END OF THE GENERAL SCHEDULE GRADE - DOMINATING THE LOWEST PAYING JOBS IN THE FEDERAL SECTOR. MUCH OF THIS LACK OF PROGRESS IS DUE TO THE EROSION OF CIVIL RIGHTS LAWS IN RECENT YEARS. THE DEPARTMENT OF JUSTICE, THE U.S. COMMISSION ON CIVIL RIGHTS, AND THE EEOC HAVE PUBLICALLY STATED THEIR OPPOSITION TO RESULTS-ORIENTED MEASURES TO ERASE SEX DISCRIMINATION IN THE FEDERAL LABOR FORCE. THE VERY AGENCIES CHARGED WITH ENSURING EQUAL OPPORTUNITIES FOR ALL HAVE DENIED THEIR MANDATE.

DECREASED FUNDING LEVELS FOR EQUAL OPPORTUNITY PROGRAMS AS WELL AS APPOINTMENTS OF PERSONS TO HIGH LEVEL AGENCY POSITIONS WHO ARE NOT COMMITTED TO THE ERADICATION OF SEX DISCRIMINATION HAS SIGNIFICANTLY WEAKENED MANDATES PROHIBITING SEX DISCRIMINATION IN FEDERAL EMPLOYMENT. SPECIFIC PROBLEM AREAS INCLUDE:

- LACK OF IMPLEMENTATION AND ENFORCEMENT OF AFFIRMATIVE ACTION PROGRAMS

THE ENFORCEMENT OF AFFIRMATIVE ACTION LAWS IS DIRECTLY DEPENDENT UPON THE COMMITMENT OF AN INDIVIDUAL MANAGER. IN WORKPLACES WHERE EQUAL EMPLOYMENT OPPORTUNITY IS NON-EXISTANT, THERE IS NO EVIDENCE OF RECRIMINATION.

- PROPOSAL TO MERGE EEO AND PERSONNEL FUNCTIONS

CURRENT ADMINISTRATION PROPOSALS INCLUDE MERGING EEO AND PERSONNEL FUNCTIONS IN THE FEDERAL WORKPLACE. THIS ACTION WOULD DE-EMPHASIZE EEO PROGRAMS WHICH HAVE TRADITIONALLY BEEN UNDER THE SUPERVISION OF THE SECRETARY OF THE AGENCY. SEVERAL AGENCIES HAVE ALREADY, HOWEVER, DOWNGRADED THIS FUNCTION TO OTHER LEVELS. THIS ACTION NOT ONLY ERODES THE ROLE OF EEO IN AN AGENCY, BUT PLACES BURDENS ON EEO SPECIALISTS WHO MUST ALSO ACT IN A PERSONNEL CAPACITY. IN RELATED INCIDENTS, FEDERAL WOMEN PROGRAM MANAGERS (FWPMS) WHO OVERSEE EEO AND AFFIRMATIVE ACTION FUNCTIONS FOR WOMEN ARE OFTEN ASSIGNED THEIR FWP RESPONSIBILITIES AS A COLLATERAL DUTY. THIS MEANS THEY ARE PERFORMING ANOTHER JOB IN ADDITION TO THEIR EEO RESPONSIBILITIES.

- CIRCUMVENTING AFFIRMATIVE ACTION RULES

THERE ARE MANY CASES WHERE MANAGERS AND SUPERVISORS DELIBERATELY ASSIGN A MALE EMPLOYEE TO AN OFFICE WHERE A VACANCY IS ANTICIPATED. AS SOON AS THE VACANCY IS REALIZED, THE MAN IS OFFERED THE HIGHER GRADE POSITION. THIS PRACTICE OF "LINING UP MEN" FOR TOP MANAGEMENT POSITIONS IS FAIRLY COMMON IN THE FEDERAL GOVERNMENT AND NEGATES MUCH OF THE PROGRESS THAT AFFIRMATIVE ACTION COULD ACHIEVE IF THE POSITION WERE OPEN TO COMPETITION AND THE NEED FOR MORE WOMEN AND MINORITIES IN HIGHER GRADES

EMPHASIZED.

CASES WHERE BLATANT PROHIBITIONS BASED ON SEX STILL EXIST AS EVIDENT BY THE RECENT CASE OF PAM DOVIAK. AS A TECHNICAL ENGINEER FOR A NAVY SHIP YARD, SHE WAS DENIED THE OPPORTUNITY TO PARTICIPATE IN SEA TRIALS TO TEST HER WORK DURING ACTUAL OPERATION OF A SUBMARINE. THIS PROCEDURE WAS NECESSARY FOR HER TO BECOME ELIGIBLE FOR A JOB PROMOTION. AFTER SEVERAL YEARS OF EEO RULINGS IN HER FAVOR, THE NAVY HAS GRANTED PERMISSION FOR WOMEN TO PARTICIPATE IN SEA TRIALS AT THE "COMMANDER'S DISCRETION."

● DISILLUSIONMENT WITH PROCESS

DISILLUSIONMENT WITH EQUAL EMPLOYMENT OPPORTUNITY LAWS AND AFFIRMATIVE ACTION IN THE FEDERAL SECTOR IS RAMPANT. AGENCY HEADS ARE NOT HELD ACCOUNTABLE FOR THEIR LACK OF ACTION IN FOSTERING EQUAL EMPLOYMENT OPPORTUNITY IN THE WORKFORCE. ALTHOUGH SOME PROGRESS HAS BEEN MADE IN THE HIRING OF WOMEN AND MINORITIES, THE JOB OF PROMOTING WOMEN AND MINORITIES WITHIN THE FEDERAL GOVERNMENT HAS JUST BEGUN.

IN SEPTEMBER 1987, THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION ISSUED A DIRECTIVE TO FEDERAL AGENCY HEADS INSTRUCTING THEM TO MAKE A STRONG COMMITMENT TO IDENTIFYING AND REMOVING BARRIERS AT ALL LEVELS OF THE WORKFORCE THAT DETER AFFIRMATIVE ACTION. SPECIFICALLY, EEOC CALLED FOR THE ACHIEVEMENT OF EQUAL EMPLOYMENT OPPORTUNITY FOR ALL FEDERAL EMPLOYEES, NOT ONLY WHEN HIRED; BUT ALSO AS THEY ADVANCE WITHIN THE WORKFORCE. ALTHOUGH THIS RENEWED COMMITMENT TO MOVING WOMEN UP THE RANKS OF FEDERAL CAREER LADDERS IS TO BE COMMENDED, ENFORCEMENT TOOLS ARE STILL NEEDED TO REALIZE THE ADVANCEMENT OF WOMEN.

WELL IMPLEMENTED AND EFFECTIVE AFFIRMATIVE ACTION PLANS AFFORD MANY BENEFITS. IN ADDITION TO THE OBVIOUS INCREASE IN THE NUMBER OF WOMEN AND MINORITIES IN THE FEDERAL SERVICE, THE CONSCIENCE OF THE FEDERAL GOVERNMENT AS AN EQUAL OPPORTUNITY EMPLOYER IS RAISED. AFFIRMATIVE ACTION UTILIZES THE TALENTS OF MANY INDIVIDUALS WHO WOULD OTHERWISE BE STIFLED BY BIAS. OPENING AND INCREASING CAREER OPPORTUNITIES EXPANDS THE PURCHASING POWER OF WOMEN AND MINORITIES, AND REDUCES THE BURDEN OF TAXPAYERS TO SUPPORT THOSE UNABLE TO SUPPORT THEMSELVES. IN ADDITION, AFFIRMATIVE ACTION PROMOTES FAIR AND RATIONALE EMPLOYMENT POLICIES AND BETTER DECISION-MAKING THROUGH THE PRESENCE OF DIVERSE VIEWPOINTS AT ALL LEVELS OF THE WORKPLACE.

GOALS: FEDERALLY EMPLOYED WOMEN IS COMMITTED TO THE ENFORCEMENT OF ALL STATUES PROHIBITING DISCRIMINATION IN THE FEDERAL WORKPLACE.AS THIS MANDATE WAS THE CATALYST FOR THE FOUNDING OF THE ORGANIZATION, FEW CONTINUALLY MONITORS THE ADVANCEMENT OF WOMEN IN THE CIVIL SERVICE AS WELL AS IDENTIFIES BARRIERS THAT DISCRIMINATE AGAINST WOMEN. AS A DEMONSTRATION OF

THIS COMMITMENT TO EQUAL EMPLOYMENT OPPORTUNITY, FEW REGULARLY PRESENTS TESTIMONY TO CONGRESS ON AFFIRMATIVE ACTION AND EEO POLICIES, MEETS WITH HEADS OF AGENCIES TO ENCOURAGE STRONG ENFORCEMENT OF EEO PROGRAMS, MAINTAINS A PROGRAM WITHIN THE ORGANIZATION TO TRAIN FEDERAL EMPLOYEES ON THE COMPLIANCE PROCEDURES AND REGULATIONS, AND SUPPORTS INDIVIDUALS AND CLASSES INVOLVED IN EEO COMPLAINTS.

FEW RECOMMENDS THAT THE FEDERAL GOVERNMENT INCREASE ITS CONCENTRATION ON RACE AND SEX CONSCIOUS TOOLS TO ACHIEVE A WELL INTEGRATED WORKFORCE AND CONTINUE TO USE STATISTICAL MEASURES OF COMPLIANCE WITH NON-DISCRIMINATION SUCH AS GOALS AND TIMETABLES. THE ORGANIZATION ALSO RECOMMENDS THAT THE FULL RANGE OF REMEDIES AND SANCTIONS BE AVAILABLE INCLUDING BACK PAY AND DEBARMENT AS AN INCENTIVE TO COMPLIANCE. IT IS ESSENTIAL TO REALIZE THE REESTABLISHMENT OF STRONG ENFORCEMENT OF AFFIRMATIVE ACTION PROGRAMS WITHIN THE FEDERAL AGENCIES AS WELL AS RETAIN PLANS FOR AGENCIES AND FEDERAL CONTRACTORS TO UTILIZE GOALS AND TIME TABLES IN AFFIRMATIVE ACTION PLANS. ADDITIONALLY, FEW OPPOSES ANY MERGER OF EEO AND PERSONNEL FUNCTIONS IN FEDERAL OFFICES. EEO MUST BE A SEPARATE ENTITY FROM PERSONNEL OFFICES, STAFFED AND SUPERVISED BY THE HEAD OF AN AGENCY, ACTIVITY, OR OFFICE.

AFFIRMATIVE ACTION IS A NECESSARY TOOL FOR WOMEN AND MINORITIES TO REACH THEIR FULL POTENTIAL IN THE PUBLIC SECTOR AS WELL AS THE PRIVATE SECTOR OF EMPLOYMENT. A SOCIETY WHICH AFFORDS FAIR TREATMENT TO WOMEN AND MINORITIES IS A STRONGER SOCIETY BY FAR, THAN ONE WHICH EXCLUDES THEM FROM FULL PARTICIPATION.

PAY EQUITY

THE EMPLOYMENT PLANK OF THE NATIONAL PLAN OF ACTION CALLED FOR EQUAL PAY FOR WORK OF EQUAL VALUE. COMMONLY TERMED PAY EQUITY, THE MOVE TO ELIMINATE SEX BASED WAGE DISCRIMINATION FROM JOB CLASSIFICATION SYSTEMS IN ALL LEVELS OF GOVERNMENT AS WELL AS THE PRIVATE SECTOR HAS BEEN PROCEEDING THROUGH THE USE OF LEGISLATION, LITIGATION AND COLLECTIVE BARGAINING. UNFORTUNATELY, THE FEDERAL GOVERNMENT IS FAR BEHIND MANY STATE AND LOCAL GOVERNMENTS AND A GROWING NUMBER OF PRIVATE SECTOR COMPANIES WHO HAVE ALREADY BEGUN TO INVESTIGATE AND CORRECT SEX- AND RACE- BASED WAGE DISCRIMINATION IN THE WAGE SETTING PROCESS.

THE OCCUPATIONAL CROWDING OF WOMEN INTO CERTAIN JOB CATEGORIES COUPLED WITH THE WAGE DATA MAKES A STRONG CASE FOR DISCRIMINATORY PRACTICES IN THE FEDERAL GOVERNMENT. PAY EQUITY FOR FEDERALLY EMPLOYED WOMEN WOULD ENSURE THAT FEDERAL EMPLOYEES, REGARDLESS OF SEX OR RACE, WOULD BE PAID EQUALLY FOR JOBS THAT ARE OF COMPARABLE VALUE TO THE GOVERNMENT AS THE EMPLOYER (IN

TERMS OF SKILL, EFFORT, RESPONSIBILITY, AND WORKING CONDITIONS). INHERENT IN THIS DEFINITION IS THE ASSUMPTION THAT THE EMPLOYER HAS A UNIFIED JOB EVALUATION SYSTEM WHICH CAN ASSIGN RELATIVE VALUE TO ALL JOBS, CREATING A SCHEME OF INTERNAL EQUITY. THE FEDERAL CLASSIFICATION SYSTEM HAS NEVER BEEN STUDIED TO DETERMINE WHETHER SEX OR RACE ARE DETERMINING FACTORS IN ASSIGNING WAGE RATES.

PRESENTING PENDING IN CONGRESS IS LEGISLATION THAT WOULD MANDATE A STUDY OF THE FEDERAL CLASSIFICATION SYSTEMS FOR SEX AND RACE BASED WAGE DISCRIMINATION. THE LEGISLATION WOULD CREATE A BI-PARTISAN COMMISSION WHICH WOULD HIRE AN INDEPENDENT CONSULTANT TO CONDUCT A STUDY OF THE FEDERAL WORKFORCE. THIS STUDY IS LIMITED IN SCOPE TO FEDERAL WORKERS AND WOULD NOT AFFECT PRIVATE OR STATE/LOCAL EMPLOYEES. IN ACCORDANCE WITH RECOMMENDATIONS FROM THE GENERAL ACCOUNTING OFFICE, THIS STUDY WILL INCLUDE AN ECONOMIC ANALYSIS AS WELL AS A JOB CONTENT ANALYSIS. ITS FINDINGS ARE PURELY ADVISORY AND THE BILL CREATES NO NEW LITIGATION RIGHTS.

GOALS: THE PASSAGE OF THE PAY EQUITY LEGISLATION IS A TOP PRIORITY FOR FEDERALLY EMPLOYED WOMEN. FEW HAS TESTIFIED BEFORE CONGRESS ON THE NEED FOR A STUDY OF THE FEDERAL CLASSIFICATION SYSTEMS, COMPILED STATISTICS ON WOMEN IN THE FEDERAL WORKFORCE, AND ORGANIZED GRASSROOTS ACTIVITY ON PAY EQUITY. AS AN ACTIVE MEMBER OF THE NATIONAL COMMITTEE ON PAY EQUITY, FEW IS PART OF A BROAD BASED COALITION WORKING TOWARD THE REALIZATION OF PAY EQUITY IN OUR SOCIETY. THE OFFICE OF PERSONNEL MANAGEMENT RECENTLY RELEASED A STUDY (OCTOBER 1987) CRITICIZING THE METHOD OF PAY EQUITY AS A FORM OF RELIEF FROM SEX BASED WAGE DISCRIMINATION IN THE FEDERAL GOVERNMENT. PREVIOUSLY, THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION AND THE CIVIL RIGHTS COMMISSIONS ALSO RELEASED REPORTS CRITICAL OF PAY EQUITY. IN THE WAKE OF ALL THIS CRITICISM, FEDERALLY EMPLOYED WOMEN FIRMLY BELIEVES THAT IT IS NECESSARY FOR THE FEDERAL GOVERNMENT TO BEGIN TO STUDY THE FEDERAL CLASSIFICATION SYSTEMS FOR SEX AND RACE BASED WAGE DISCRIMINATION AND CORRECT ANY INEQUITIES FOUND.

PREGNANCY DISCRIMINATION

THE EMPLOYMENT PLANK OF THE NATIONAL PLAN OF ACTION CALLED FOR THE ABOLITION OF DISCRIMINATION BASED ON PREGNANCY. SHORTLY THEREAFTER, TITLE VII WAS AMENDED BY PUBLIC LAW 95-555 (APPROVED OCTOBER 31, 1978) TO MAKE CLEAR THAT DISCRIMINATION ON THE BASIS OF PREGNANCY, CHILDBIRTH, OR RELATED MEDICAL CONDITIONS CONSTITUTES UNLAWFUL SEX DISCRIMINATION. THE AMENDMENT, REFERRED TO AS THE PREGNANCY DISCRIMINATION ACT, DOES NOT REQUIRE EMPLOYERS TO PROVIDE SPECIAL BENEFITS FOR PREGNANT EMPLOYEES OR TO INSTITUTE NEW PROGRAMS. IT SIMPLY REQUIRES THAT WOMEN AFFECTED BY

PREGNANCY BE TREATED THE SAME FOR ALL EMPLOYMENT-RELATED PURPOSES AS OTHER PERSONS NOT SO AFFECTED, BUT SIMILAR IN THEIR ABILITY OR INABILITY TO WORK.

IN REAFFIRMATION OF THIS LAW, THE SUPREME COURT RULED IN 1986 TO UPHOLD A CALIFORNIA LAW THAT REQUIRES EMPLOYERS TO PROVIDE A 4 MONTH PERIOD OF UNPAID LEAVE IN THE CASE OF PHYSICAL DISABILITY CAUSED BY PREGNANCY. THE CASE, CALIFORNIA SAVINGS AND LOAN ASSOCIATION V. GUERRA (U.S.S.C. JAN.13, 1986) WAS BROUGHT BY CALIFORNIA SAVINGS AND LOAN, AFTER ONE OF ITS EMPLOYEES FILED A COMPLAINT WITH A CALIFORNIA STATE AGENCY ALLEGING THAT THE BANK HAD NOT ALLOWED HER AN UNPAID PREGNANCY LEAVE AS REQUIRED BY CALIFORNIA LAW. THE BANK ATTEMPTED TO AVOID COMPLYING WITH THE STATE LAW BY ASSERTING IN FEDERAL COURT THAT THE CALIFORNIA STATUTE MANDATING JOB REINSTATEMENT AFTER A FOUR MONTH UNPAID PREGNANCY LEAVE CONFLICTS WITH THE FEDERAL PREGNANCY DISCRIMINATION ACT OF 1978.

THE CAL FED CASE IS PART OF A LARGER DEBATE OVER PREGNANCY IN THE WORKPLACE. THE PREGNANCY DISCRIMIANTION ACT REQUIRES ONLY THAT PREGNANT WORKERS BE TREATED THE SAME AS OTHER EMPLOYEES. IN THE ABSENCE OF STATE LAWS REQUIRING BENEFITS, EMPLOYERS WHO CHOOSE TO PROVIDE INADEQUATE BENEFITS FOR ALL WOREKRS, MAY DO SO WITHOUT VIOLATING THE PDA. A BILL CURRENTLY PENDING IN CONGRESS, THE PARENTAL AND MEDICAL LEAVE ACT, WOULD REMEDY THIS PROBLEM BY REQUIRING ALL EMPLOYERS TO PRCVIDE UP TO 10 WEEKS OF UNPAID LEAVE FOR THE BIRTH OR ADOPTION OF A CHILD.

WOMEN ARE THE FASTEST GROWING SEGMENT OF THE LABOR FORCE AND WORK DUE TO ECCNOMIC NECESSITY. WITH 44 PERCENT OF THE LABOR FCRCE COMPRISED OF WCMEN (SOON TO BE HALF), POLICIES ADDRESSING CHILD BIRTH MUST BE DISCUSSED. OF THE OVER 2 MILLION FEDERAL WORKERS IN THE COUNTRY, 549,000 ARE WOMEN OF CHILDBEARING AGE (18-44) AND 1.2 MILLION ARE WOMEN AND MEN IN THE YOUNG CHILD REARING AGE AGES 18-24). FEDERAL WOMEN ARE SIMILAR TO ALL WORKING WOMEN IN THAT 80 PERCENT WILL BECOME PREGNANT DURING THEIR CHILD BEARING YEARS; THE NEED FOR PARENTAL LEAVE POLICIES FCR BOTH SEXES IS CLEARLY DEMONSTRATED.

REPRESENTATIVE PATRICIA SCHRODER (D-CO), CHAIR OF THE POST OFFICE AND CIVIL SERVICE SUBCOMMITTEE ON CIVIL SERVICE, ISSUED A REPORT IN THE 99TH CONGRESS (1986) ON PARENTAL LEAVE PRACTICES IN THE FEDERAL GOVERNMENT. THE ANALYSIS REVEALS THAT, ALTHOUGH NO OFFICIAL GOVERNMENT-WIDE POLICY EXISTS, THE PRACTICES OF MOST AGENCIES ARE REMARKABLY SIMILAR: IF THERE IS ANY LEAVE OFFERED AT ALL, IT IS DONE AT THE DISCRETION OF EACH INDIVIDUAL SUPERVISOR. THIS PRACTICE RESULTS IN A WIDELY DISPARATE RANGE OF LEAVE PERMITTED FROM AGENCY TC AGENCY AND EVEN WITHIN THE SAME AGENCY. UNDER CURRENT FEDERAL PCLICIES REGARDING PARENTAL LEAVE, WOMEN AND MEN ARE OFTEN FORCED TO CHOOSE BETWEEN ECONOMIC SECURITY AND STARTING A FAMILY. WHEN A FEDERAL WORKER TAKES

LEAVE BEYOND ACCUMULATED SICK AND ANNUAL LEAVE FOR THE CARING OF AN INFANT, NEWLY ADOPTED, OR SERIOUSLY ILL CHILD, S/HE RISKS RETURNING TO A LOWER PAID JOB, LOSING EMPLOYEE BENEFITS, OR LOSING THEIR JOB ALTOGETHER. THESE POLICIES LEAVE LITTLE ROOM FOR ILLNESS DURING PREGNANCY, SERIOUS ILLNES OF A CHILD OR DEPENDENT, THE FATHER CARING FOR THE NEWBORN INFANT, OR THE ADOPTION OF A CHILD. THE UNITED STATES IS THE ONLY INDUSTRIALIZED COUNTRY WITHOUT A NATIONAL JOB PROTECTED MATERNITY LEAVE OR A SYSTEM OF TEMPORARY WAGE REPLACEMENT FOR PARENTING OF FAMILIES.

GOALS: FEW HAS BEEN ACTIVE IN THE REALIZATION OF PARENTAL LEAVE POLICIES NATIONWIDE AS WELL AS UNIFORM, CONSISTENT POLICIES WITHIN THE UNITED STATES FEDERAL GOVERNMENT. FEW'S ULTIMATE GOAL IS TO REALIZE A SYSTEM OF TEMPORARY WAGE REPLACEMENTT FOR PARENTS IN THE FEDERAL GOVERNMENT.

ALTERNATIVE WORK SCHEDULES

THE NATIONAL PLAN OF ACTION CALLED FOR THE PASSAGE OF H.R. 7814 (1978) TO CREATE AN EXPERIMENTAL THREE YEAR PROGRAM IN WHICH THE FEDERAL GOVERNMENT ALLOWED THEIR EMPLOYEES TO WORK ON FLEXIBLE WORK SCHEDULES. H.R. 7814 DID PASS THAT YEAR, AS DID A SIMILAR BILL IN 1986 PERMANENTELY AUTHORIZING FLEXIBLE WORK SCHEDULES FOR FEDERAL WORKERS. FEW WAS INSTRUMENTAL IN THE PASSAGE OF THIS LEGISLATION.

FEW HAS SUPPORTED FLEXIBLE AND COMPRESSED WORK SCHEDULES FOR FEDERAL WORKERS SINCE THEIR INCEPTION IN 1977. THE ORGANIZATION STRONGLY BELIEVES THAT ALTERNATIVE WORK SCHEDULES (AWS) PROVIDE FEDERAL EMPLOYEES AS WELL AS THE FEDERAL GOVERNMENT WITH MANY ADVANTAGES SUCH AS INCREASED EMPLOYEE MORALE, EFFICIENCY, AND PRODUCTIVITY; VERSATILITY TO MORE SUCCESSFULLY COMBINE FAMILY RESPONSIBILITIES WITH JOB DEMANDS; AVAILABILITY OF AN EXPANDED LABOR POOL; AND ADDED INCENTIVES TO RECRUIT AND RETAIN FEDERAL EMPLOYEES. ALTERNATIVE WORK SCHEDULES ALLOW MANY WOMEN WHO WORK FOR THE FEDERAL GOVERNMENT TO MORE SUCCESSFULLY COMBINE THEIR CAREERS WITH THEIR PERSONAL LIVES. BY ALTERNATING WORKING HOURS, WOMEN CAN OFTEN EASE SOME OF THE FINANCIAL BURDEN OF CHILD CARE. ALTERNATIVE WORK SCHEDULES ALSO BENEFIT TWO PARENT FAMILIES WHO ARE BOTH EMPLOYED BY THE FEDERAL GOVERNMENT; COUPLES ARE BETTER ABLE TO STAGGER THEIR WORK SCHEDULES TO COINCIDE WITH THEIR CHILDREN'S SCHOOL HOURS, THUS DECREASING THE NEED FOR CHILD CARE.

GOALS: IN CONJUNCTION WITH THE PERMANENT AUTHORIZATION OF ALTERNATIVE WORK SCHEDULES, FEW URGES AN AGGRESSIVE EDUCATION PROGRAM FOR SUPERVISORS AND MANAGERS BY THE OFFICE OF PERSONNEL MANAGEMENT ON THE IMPLEMENTATION OF AWS PROGRAMS. EDUCATIONAL MATERIALS AND SEMINARS SHOULD BE DEVELOPED THAT COULD AID SUPERVISORS IN DEVISING POSSIBLE AWS IN THEIR AGENCIES. WHENEVER

POSSIBLE, FEDERAL EMPLOYEES SHOULD BE WELL INFORMED OF THE EXISTENCE OF FLEXIBLE WORK SCHEDULES.

VETERAN'S PREFERENCE

THE NATIONAL PLAN OF ACTICN CALLED FOR MODIFICATION OF THE VETERAN'S PREFERENCE ACT WHICH DENIED WOMEN MANY OPPORTUNITIES IN THE FEDERAL GOVERNMENT. "BECAUSE WOMEN HAVE SEVERELY LIMITED ACCESS TO SERVICE IN THE ARMED FORCES, THE PROVISIONS OF THE VETERAN PREFERENCE ACT MAKE IT HARDER FOR THEM TO GAIN ENTRY INTO BETTER PAYING GOVERNMENT JOBS. THEY ALSO ARE THREATENED WITH LOSING THEIR JOBS WHEN VETERANS ARE PROTECTED DURING RIFS (REDUCTION IN FORCE). BECAUSE OF PREFERENTIAL TREATMENT ACCORDED VETERANS, 98 PERCENT OF WHOM ARE MALE, THEY ARE TWICE AS LIKELY TO BE EMPLOYED BY THE FEDERAL GOVERNMENT."

THE VETERANS' PREFERENCE ACT OF 1944 WAS ENACTED BY CONGRESS FOLLOWING WORLD WAR II TC FACILITATE THE RE-ENTRY OF VETERANS INTO TO THE WORKFORCE. CURRENT CIVIL SERVICE POLICY IS STILL BASED ON THIS 1944 LAW, WHICH ENTITLED A VETERAN TO EMPLOYMENT AND RETENTION PREFERENCE IN COMPETITIVE SERVICE. SINCE THE VETERAN POPULATION IS OVER 98 PERCENT MALE AND 92 PERCENT NON-MINORITY, PREFERENCE HAD BEEN OF GREATEST ASSISTANCE TO WHITE MALES. IN TIMES OF RIF, IT BECOMES CLEAR, THAT THE OVERWHELMING BENEFICIARIES OF VETERANS' PREFERENCE ARE MEN. PROPOSED MODIFICATIONS INCLUDED PREFERENCE LIMITED TO NON-CAREER VETERANS PRIOR TC THE ALL VOLUNTEER ARMED SERVICES FOR A TIME NOT EXTENDING BEYOND 5 YEARS AND UNLIMITED PREFERENCE TO BE GRANTED TO VETERANS WITH COMBAT-RELATED DISABILITIES.

THE VETERAN'S PREFERENCE ISSUE WAS THE IMPETUS FOR FEW TO HIRE A LOBBYIST. THIS PERSON SET UP A COALITION TO COORDINATE BROAD BASE SUPPORT FOR MODIFYING VETERAN'S PREFERENCE, DEVELOPING A DATA BASE ON VETERAN'S AND WOMEN'S EMPLOYMENT IN THE FEDERAL GOVERNMENT, AND COORDINATE ACTIVITIES FOR LEGISLATIVE ACTION ON MODIFYING VETERANS' PREFERENCE. THE COALITION ARGUED THAT UNLIMITED VETERAN'S PREFERENCE AND EQUAL EMPLOYMENT OPPORTUNITY COULD NOT CO-EXIST IN THE FEDERAL GOVERNMENT. AN ATTEMPT WAS MADE TO INCLUDE MODIFICATION OF VETERANS' PREFERENCE IN THE 1978 CIVIL SERVICE REFORM ACT, BUT THE CONTROVERSY WAS TOO GREAT FOR PASSAGE.

GOALS SERIOUS DISCUSSION OF MCDIFICATION OF CURRENT VETERAN'S PREFERENCE STATUES ENDED IN 1981. IT IS TIME TO, ONCE AGAIN, TO COLLECT DATA ON THE IMPACT OF VETERANS' PREFERENCE ON THE FEDERAL FORCE,

A RELATED SUBJECT THAT MUST BE ADDRESSED IS THE ROLE CF WOMEN IN THE MILITARY. DESPITE RECENT PROPOSED LEGISLATION TO ALLOW WOMEN GREATER ACCESS IN MILITARY ASSIGNMENTS, COMBAT

EXCLUSION LAWS STILL GREATLY HINDER WOMEN'S OPPORTUNITIES IN THE UNITED STATES ARMED SERVICES.

NATIONAL PLAN OF ACTION - CHILD CARE PLANK

THE NATIONAL PLAN OF ACTION CALLED FOR "THE FEDERAL GOVERNMENT TO ASSUME A MAJOR ROLE IN DIRECTING AND PROVIDING COMPREHENSIVE, VOLUNTARY, FLEXIBLE HOUR, BIAS FREE, NON SEXIST, QUALITY CHILD CARE FACILITIES FOR FEDERAL EMPLOYEES.

UNFORTUNATELY, LITTLE PROGRESS HAS BEEN MADE IN THIS AREA. A REPORT RELEASED BY THE HOUSE GOVERNMENT OPERATIONS COMMITTEE ON OCTOBER 12, 1987 REVEALS THAT THE FEDERAL GOVERNMENT IS NOT FULFILLING ITS RESPONSIBILITY TO PROVIDE FOR AND SET UP DAY CARE CENTERS. THE REPORT IS BASED ON A STUDY CONDUCTED AT THE DIRECTION OF REPRESENTATIVE CARDISS COLLINS, CHAIR OF THE GOVERNMENT ACTIVITES AND TRANSPORTATION SUBCOMMITTEE. SHE NOTED, "CONGRESS HAS SPECIFICALLY AUTHORIZED AND ENCOURAGED FEDERAL AGENCIES TO PROVIDE SPACE IN GOVERNMENT BUILDINGS FOR ON-SITE CHILD CARE, YET THERE ARE ONLY TEN SUCH CENTERS IN THE COUNTRY TO SERVE THE ENTIRE FEDERAL WORKFORCE." THE GENERAL SERVICES ADMINISTRATION IS RESPONSIBLE FOR GRANTING PERMISSION TO AGENCIES FOR USE OF AVAILABLE SPACE. THE REPORT CONCLUDED, "AT PRESENT, THERE IS NO EFFECTIVE LEADERSHIP WITHIN THE FEDERAL GOVERNMENT TO PROVIDE FOR THE DAY CARE NEEDS OF SOME THREE MILLION CIVILIAN FEDERAL WORKERS."

IN RESPONSE TO THIS REPORT, TERENCE C. GOLDEN, GSA ADMINISTRATOR, ANNOUNCED ON OCTOBER 29, 1987 THE APPOINTMENT OF THE FIRST HIGH-LEVEL FEDERAL OFFICIAL RESPONSIBLE FOR CREATING MORE CHILD CARE FACILITIES AT GOVERNMENT AGENCIES. GOLDEN REAFFIRMED HIS "TOTAL COMMITMENT" FOR REALIZING ADEQUATE CHILD CARE FOR FEDERAL WORKERS. DESPITE THIS COMMITMENT, HIGH FEES AND LONG WAITING LISTS FOR SPACES FOR INFANTS ARE PROBLEMS CONFRONTING THE CENTERS ALREADY IN OPERATION. GOLDEN ACKNOWLEDGED THAT MAKING CHILD CARE AFFORDABLE FOR LOWER INCOME EMPLOYEES IS A MAJOR ISSUE. ONE HALF THE MOTHERS WITH CHILDREN UNDER THE AGE OF ONE ARE IN THE PAID WORKFORCE.

GOALS: THE GOVERNMENT SHOULD RECOGNIZE AND ACT UPON ITS OBLIGATION TO PROVIDE CHILDCARE FACILITIES TO WORKING WOMEN AND SHOULD LAUNCH A NATIONWIDE EFFORT FOR PROVIDING CHILDCARE FACILITIES RESPONSIVE TO FAMILIES INCLUDING SINGLE PARENT FAMILIES.

FEDERALLY EMPLOYED WOMEN'S COMMITTED TO REALIZING AFFORDABLE AND ADEQUATE CHILD CARE FOR FEDERAL EMPLOYEES. CHILD CARE MUST INCLUDE FACILITIES FOR INFANT CARE AS WELL AS TODDLERS. WITH THE CHANGING DEMOGRAPHICS OF THE WORKFORCE, THE FEDERAL GOVERNMENT

SHOULD ACT AS A MODEL EMPLOYER AND PROVIDE CHILD CARE FOR ALL ITS EMPLOYEES.

NATIONAL PLAN OF ACTION - WOMEN IN ELECTIVE AND APPOINTIVE OFFICE

THE NATIONAL PLAN OF ACTION CALLED FOR INCREASED NUMBERS OF WOMEN IN ELECTIVE AND APPOINTIVE OFFICES. ALTHOUGH A FEW NOTABLE APPOINTMENTS HAVE BEEN MADE IN RECENT YEARS INCLUDING SANDRA DAY O'CONNOR TO SERVE AS THE FIRST WOMAN SUPREME COURT JUSTICE AS WELL AS MARGARET HECKLER AND ELIZABETH DOLE TO CABINET LEVEL POSITIONS IN THE REAGAN ADMINISTRATION, THE NUMBER OF WOMEN IN TOP POLICY POSITIONS IS VERY SMALL.

THE APPOINTMENT OF WOMEN TO TOP GOVERNMENT POLICY MAKING POSITIONS CARRIES OUT EQUAL EMPLOYMENT PRINCIPLES AND SETS AN EXAMPLE FOR OTHER EMPLOYERS TO FOLLOW. YET, IN THE FORD ADMINISTRATION, ONLY 14 PERCENT OF ALL APPOINTED POSITIONS WERE WOMEN; IN THE CARTER ADMINISTRATION 22 PERCENT OF ALL APPOINTMENTS WERE WOMEN; IN THE REAGAN ADMINISTRATION (THROUGH 1983), 8 PERCENT OF ALL FEDERAL APPOINTMENTS WERE WOMEN.

THE NUMBER OF APPOINTMENTS TO FEDERAL JUDGESHIPS IS NOT MUCH BETTER THAN OVERALL FEDERAL APPOINTMENTS. IN 1986, ONLY 8.4 PERCENT (OR 64) FEDERAL JUDGES WERE WOMEN.

THE NUMBER OF WOMEN IN THE U.S. CONGRESS HAS ONLY SLIGHTLY IMPROVED IN THE PAST DECADE. IN 1977, 3 PERCENT OF ALL MEMBERS OF CONGRESS WERE WOMEN. BY 1987, THIS PERCENTAGE HAD INCREASED TO 5 PERCENT WITH TWO WOMAN SERVING IN THE U.S. SENATE. WOMEN'S PARTICIPATION IN THE STATE LEGISLATURES HAS SHOWN GREATER IMPROVEMENT IN THE RECENT DECADE AS COMPARED TO CONGRESS. IN 1987, 14 PERCENT OF ALL STATE ELECTED OFFICIALS WERE WOMEN AS COMPARED TO 1977 WHEN 11 PERCENT OF ALL STATE ELECTED OFFICIALS ARE WOMEN.

GOALS: AGRESSIVE ACTION IS NEEDED TO PRESSURE ADMINISTRATION OFFICIALS TO APPOINT WOMEN TO HIGH LEVEL POLICY POSITIONS IN THE FEDERAL GOVERNMENT. IN ADDITION, WOMEN NEED TO BE ENCOURAGED TO RUN FOR ELECTED OFFICE ON THE LOCAL, STATE, AND NATIONAL LEVEL.

NATIONAL PLAN OF ACTION - MINORITY WOMEN PLANK

THE PROBLEMS FACED BY WHITE WOMEN ARE EXACERBATED IF ONE IS A WOMAN OF COLOR. ALL ISSUES DISCUSSED IN THIS PAPER RELATE TO MINORITY WOMEN AS WELL AS ALL WOMEN. IN ESTABLISHING PAY EQUITY JOB EVALUTION SYSTEMS AND INSTITUTING CHILD CARE FACILITIES,

SPECIAL CONSIDERATION MUST BE GRANTED TO MINORITY WOMEN WHO EARN EVEN LESS WAGES AND SUFFER FROM DOUBLE DISCRIMINATION THAN THEIR WHITE FEMALE COUNTERPARTS.

NATIONAL PLAN OF ACTION-EQUAL RIGHTS AMENDMENT PLANK

THE NATIONAL PLAN OF ACTION DECLARED THAT WOMEN HAVE WAITED OVER 200 YEARS FOR THE EQUALITY PROMISED BY THE DECLARATION OF INDEPENDENCE TO MEN AND CALLED FOR, "THE EQUAL RIGHTS AMENDMENT TO BE RATIFIED."

ON JUNE 30, 1982 THE RATIFICATION PERIOD FOR THE EQUAL RIGHTS AMENDMENT ENDED. ALTHOUGH THE AMENDMENT HAS BEEN INTRODUCED IN EVERY CONGRESS SINCE THAT TIME, IT HAS FAILED TO BE PASSED BY CONGRESS.

FEDERALLY EMPLOYED WOMEN HAS ADOPTED THE FOLLOWING POSITION PAPER ON THE EQUAL RIGHTS AMENDMENT. "FEW WAS FOUNDED IN 1968 TO TAKE ACTION TO END SEX DISCRIMINATION IN FEDERAL GOVERNMENT EMPLOYMENT. AS EQUAL RIGHTS AND EQUAL JOB OPPORTUNITIES FOR ALL WOMEN ARE THE BASIS FOR FEW'S EXISTENCE, FEW STRONGLY SUPPORTS THE RATIFICATION OF THE EQUAL RIGHTS AMENDMENT AND OPPOSES ANY ERA WITH QUALIFYING AMENDMENTS. FULL LEGAL EQUALITY IS NECESSARY FOR WOMEN TO BE EQUAL PARTNERS AND PARTICIPANTS IN OUR SOCIETY.

THE 14TH AMENDMENT WHICH GUARANTEES "EQUAL PROTECTION OF THE LAW" HAS NEVER BEEN INTERPRETED TO INCLUDE ALL WOMEN. IN THE OVER ONE HUNDRED YEARS SINCE THE ADOPTION OF THE 14TH AMENDMENT, THE SUPREME COURT HAS APPLIED THE EQUAL PROTECTION GUARANTEE TO ALIENS, CRIMINALS, CHILDREN, PEOPLE OF DIFFERENT RACES, BUT THE COURT HAS FAILED TO EXTEND UNRESTRICTED COVERAGE TO WOMEN.

UNDER CURRENT LAW, THE BURDEN OF PROOF IS ON EACH PLAINTIFF TO PROVE A CASE OF SEX DISCRIMINATION. THE EQUAL RIGHTS AMENDMENT WOULD DEEM SEX A "SUSPECT CLASSIFICATION" AND PLACE THE BURDEN OF PROOF ON THE DEFENDENT. WITHOUT AN ERA, SEX DISCRIMINATION MUST BE PROVED ON A CASE BY CASE BASIS WHICH IS LONG AND TIME CONSUMING. ADDITIONALLY, WITHOUT AN ERA, WOMEN'S RIGHTS CAN BE REVOKED WITH A CHANGE IN THE POLITICAL ATMOSPHERE. THE ERA IS NEEDED TO MAKE WOMEN'S EQUALITY PERMANENT.

DISCRIMINATION ON THE BASIS OF SEX CONTINUES TO BE A NATIONAL AND WIDESPREAD PROBLEM. THE ERA WOULD PROVIDE A NATIONAL UNIFORM FOUNDATION NECESSARY TO PROTECT WOMEN'S BASIC RIGHTS TO EQUALITY BEFORE THE LAW. IT WOULD SURPASS THE LIMITATIONS OF THE EQUAL PROTECTION ANALYSIS AS A TOOL FOR PROMOTING EQUALITY BETWEEN THE SEXES. UNDER THE ERA, THE GOVERNMENT WOULD BE PROHIBITED FROM CLASSIFYING ON THE BASIS OF SEX AND REQUIRE MEN AND WOMEN TO BE JUDGED AS INDIVIDUALS. ADDITIONALLY, GOVERNMENT POLICIES,

PRACTICES AND LAWS THAT CLASSIFY ON SOME NEUTRAL BASIS, BUT HAVE A DISPROPORTIONATE NEGATIVE EFFECT ON ONLY ONE SEX WILL BE PROHIBITED.

THE EQUAL RIGHTS AMENDMENT WAS INTRODUCED INTO THE UNITED STATES CONGRESS IN 1923, BUT DID NOT GARNER THE NECESSARY TWO-THIRDS VOTE FOR PASSAGE UNTIL 1972. THE PROPOSED AMENDMENT TO THE CONSTITUTION WAS SENT TO THE STATES FOR RATIFICATION. IN 1979, THE RATIFICATION PERIOD WAS EXTENDED 3 YEARS. ON JUNE 30, 1982 THE RATIFICATION PERIOD FOR THE EQUAL RIGHTS AMENDMENT ENDED -- 3 STATES SHORT OF THE NEEDED TWO-THIRDS FOR RATIFICATION. IN EVERY CONGRESS SINCE THE RATIFICATION PERIOD ENDED, THE EQUAL RIGHTS AMENDMENT HAS BEEN INTRODUCED.

AFTER THE END OF THE RATIFICATION PERIOD IN JUNE 1982, FEW VOWED TO PRESS WITH RENEWED VIGOR FOR THE PASSAGE OF THE ERA BY THE U.S. CONGRESS. PRO-ERA STRATEGIES MUST INCLUDE ELECTING PRO-ERA POLICYMAKERS TO CONGRESS AS WELL S TO THE STATE LEGISLATURES. EVERY POLITICAL CANDIDATE RUNNING FOR POLITICAL OFFICE AS WELL AS EVERY POLITICVAL PARTY MUST BE HELD ACCOUNTABLE FOR THEIR POSITION ON THE EQUAL RIGHTS AMENDMENT.

AS A SHOW OF DEDICATION TCWARD THE PASSAGE OF THE ERA, FEW HAS TAKEN SEVERAL ACTIONS. THE POSITION OF SPECIAL ASSISTANT TO THE NATIONAL PRESIDENT OF THE ORGANIZATION WAS CREATED TO ENSURE THAT THE ERA BE GIVEN FULL PRIORITY AND ATTENTION BY THE FEW MEMBERSHIP AND TO ENCOURAGE ACTIVE PARTICIPATION ON THE CHAPTER LEVEL. IN ADDITION, AN ERA FUND HAS BEEN ESTABLISHED FOR SPECIAL PROJECTS TARGETED TOWARD THAT PASSAGE OF THE EQUAL RIGHTS AMENDMENT.

THE EQUAL RIGHTS AMENDMENT STATES:

ARTICLE I

EQUALITY OF THE LAW SHALL NOT BE DENIED OR ABRIDGED BY THE UNITED STATES OR BY ANY STATE ON THE ACCOUNT OF SEX.

ARTICLE II

THE CONGRESS SHALL HAVE THE POWER TO ENFORCE, BY APPROPRIATE LEGISLATION, THE PROVISIONS OF THIS ARTICLE.

ARTICLE III

THIS AMENDMENT SHALL TAKE EFFECT TWO YEARS AFTER THE DATE OF RATIFICATION.

SOURCES

STATISTICAL INFORMATION CONTAINED IN THIS PUBLICATION WAS GATHERED FROM THE FCLLOWING SCURCES:

OFFICE OF PERSONNEL MANAGEMENT, CENTRAL PERSONNNEL DATA FILES.

U.S. CIVIL SERVICE COMMISSION, EQUAL EMPLOYMENT CPPORTUNITY STATISTICS.

U.S. OFFICE OF PERSONNEL MANAGEMENT, AFFIRMATIVE EMPLOYMENT STATISTICS.

THE FEDERAL TIMES.

WOMEN'S RESEARCH AND EDUCATION INSTITUTE OF THE CONGRESSIONAL CAUCUS FCR WOMEN'S ISSUES, THE AMERICAN WOMAN, 1987-1988.

NATIONAL COMMISSION ON THE OBSERVAANCE OF INTERNATIONAL WOMEN'S YEAR, THE SPIRIT OF HCUSTON, WASHINGTON D.C. MARCH 1978.

FEDERAL EQUAL EMPLOYMENT OPPORTUNITY REPORTING ACT
H.R. 3330

Revise section 3(e) as follows:

(e) Report to Congress. -- (1) In lieu of submission to the Commission of the plan and reports described in subsections (a) and (c), the agencies designated in section 4301(1)(ii) of Title 5, United States Code shall make their submissions to the Permanent Select Committee on Intelligence of the House of Representatives and to the Select Committee on Intelligence of the Senate. (2) The Commission shall submit a report annually to the Congress and to the President describing the affirmative action efforts of each Federal entity and such entity's compliance with this Act.

Add a new section 4(c) as follows:

Application of Act. -- This section shall not apply to the agencies designated in section 4301(1)(ii) of Title 5, United States Code or to any of their components or installations.

Add a new section 5(c) as follows:

(c) Application of Act. -- This section shall not apply to the agencies designated in section 4301(1)(ii) of Title 5, United States Code or to any of their components or installations.